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Monday - November 13, 2023

9:05 a.m.

P R O C E E D I N G S

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(Proceedings were heard out of the presence of the jury:)

THE CLERK: Calling Civil 20-5671, Epic Games, Inc.
vs. Google LLC, and Multidistrict Litigation 21-2981, In re
Google Play Store Antitrust Litigation.

Counsel.

THE COURT: I'll tell you what, just to streamline
since you're going to do it again when the jury is here, just
say each of you and then stop. Okay? You can do the whole
team later. All right? Go ahead.

MR. BORNSTEIN: Good morning, Your Honor. Gary
Bornstein for Epic Games.

MR. POMERANTZ: And Glenn Pomerantz on behalf of
Google.

THE COURT: Okay. A couple of things we're going to
take up first.

All right. I'm going to give you my disposition for those
two Samsung documents, but the sealing is not working. These
things are coming in, I cannot keep track of where you-all are.
You're working -- you get the filing and you work things out,
which is what I want you to do, but I don't know what I'm
supposed to do after that.

So maybe tomorrow morning just give me a list of the

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1 things I actually need to do that you haven't worked out.

2 Okay?

3 Now, I think, Epic, this is mostly on you, but third
4 parties are saying they're not getting enough time. What's
5 going on with that?

6 **MR. BORNSTEIN:** So, Your Honor, in light of that, we
7 have negotiated a new schedule with Google, which we worked
8 that over the past several days, under which we will disclose
9 to them earlier than we have been the documents we intend to
10 use with the witnesses that we are calling on the understanding
11 that will give them more time to address things with third
12 parties.

13 **THE COURT:** Okay.

14 **MR. BORNSTEIN:** Because the documents at issue are
15 Google documents where they have obligations for sealing, and
16 so the timing issue has been on the Google end; and so to
17 accommodate that, we're going to give them more notice.

18 **THE COURT:** Well, actually, I was thinking about
19 Supercell sent something in.

20 **MR. BORNSTEIN:** Yes, that's -- it's from a Google
21 document where Supercell appears. And so what's happened is
22 these third parties are sending in things because they appear
23 in Google documents. So we give Google notice. Google informs
24 the third parties to the extent they feel they need to do so,
25 and then the third parties react. So we've just advanced the

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1 timeline for that so Google can get to the third parties more
2 quickly.

3 **THE COURT:** Okay. Is that right, Mr. Pomerantz?

4 **MR. POMERANTZ:** That's correct.

5 **THE COURT:** Okay. That will be helpful, but just tell
6 me tomorrow morning what you haven't actually worked out.
7 Okay?

8 **MR. BORNSTEIN:** Will do, Your Honor.

9 **THE WITNESS:** Now, with respect to the two
10 Samsung-related exhibits -- Exhibit 1065, Exhibit 624 -- the
11 requests to seal are denied. As I stated at my prior order at
12 556 F.Supp 3d 1106 2021, Google was required to, quote,
13 "articulate compelling reasons supported by specific factual
14 findings that outweigh the general history of access and the
15 public policies favoring disclosure," close quote. That's
16 citing *Kamakana* at 447 F. 3d at 1178-'79 cleaned up a bit.

17 Google did not meet those standards. It did not
18 articulate a compelling reason, and the declaration that it
19 cited at Docket Number 769 that supposedly provided the
20 compelling reasons was a little more than a generic assertion
21 of potential competitive harm utterly devoid of any specific
22 factual findings that would outweigh the public right to
23 access.

24 So you're free to use those as you wish. Please keep this
25 in mind for future sealing motions because this will likely be

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1 the same standard.

2 Now, on an unrelated topic, and let me preface this by
3 saying at this point this will not be anything the jury gets
4 any even whiff of a hint about, but I am profoundly concerned
5 about the testimony that I heard last week from an in-house
6 lawyer asserting a fake privilege or being involved in
7 conversations about the assertion of a fake privilege, coupled
8 with the abundance of evidence from Witness Lam and others with
9 respect to conscious decisions to delete or not turn on chat
10 history with respect to evidence that was clearly relevant to
11 the issues in the case.

12 This is on top of the findings and evidence that I -- that
13 led to those findings that I looked at last year in that order
14 I just cited in F.Supp. 3d.

15 So I am forming a deep concern that there is an ingrained
16 systemic culture of suppression of relevant evidence within
17 Google, and I'm considering changing the jury instruction from
18 "permissive" to "mandatory." I have not made that decision
19 yet. I'm also considering some other follow-up and sanctions.

20 I am going to hold a hearing on Friday. We'll do it at
21 11:00 a.m. And I expect to have the chief legal officer for
22 Google, whoever is the man or woman at the top. I don't know
23 who that is, but I want the person where the buck stops at
24 Google in terms of running the in-house legal department and
25 working with outside counsel and the person who sets the policy

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1 and defines the culture for document preservation and just
2 general legal practices within the company. All right?

3 So I am expecting -- I don't know what you-all call it --
4 chief legal officer, general counsel, I want that person here
5 Friday at 11:00. None of this will be shown to the jury. The
6 jury is not going to hear any about this. They're not going to
7 be here on Friday. We cannot do Friday. I talked with the
8 jury and they can't do Friday, but we're going to do that at
9 11:00 a.m. and that's going to inform my decision about whether
10 I make that jury instruction mandatory rather than permissive
11 and whether there's additional follow-up. All right?

12 Okay. All right. Anything else?

13 **MR. BORNSTEIN:** Yes, Your Honor. We had just a few
14 things. One relates to a deposition that we intend to play
15 from the 30(b)(6) representative from Amazon. You've heard a
16 lot about Amazon so far in the trial.

17 We have worked very hard with Google folks to narrow the
18 scope of our disputes. We've withdrawn the documents that they
19 have been objecting to. We have a few pieces of testimony as
20 to which we just haven't been able to get there and,
21 unfortunately, need to get Your Honor's ruling on.

22 **THE COURT:** Do we need to do that now?

23 **MR. BORNSTEIN:** Well, I can hand up the testimony and
24 Your Honor can take a look at it at your convenience. We
25 won't -- we have two live witnesses who will be going, and we

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1 can -- if it would be helpful --

2 **THE COURT:** Just hand that to Ms. Clark.

3 **MR. BORNSTEIN:** Sure. And we can defer this to
4 tomorrow as well in terms of when we play it to give Your Honor
5 time to address the issue.

6 **THE COURT:** It's not till tomorrow?

7 **MR. BORNSTEIN:** We can -- we can --

8 **THE COURT:** Oh.

9 **MR. BORNSTEIN:** -- reserve the witness until tomorrow
10 so that Your Honor has time if that would be helpful.

11 **THE COURT:** All right. Let me just look at it right
12 now.

13 **MR. BORNSTEIN:** Sure.

14 **THE COURT:** If you can hand it to...

15 So am I going to be able to see exactly what you're
16 disagreeing about?

17 **MR. BORNSTEIN:** You will.

18 **THE COURT:** Okay.

19 **THE CLERK:** Are these two of the same thing?

20 **MR. BORNSTEIN:** They were and I can give you a third
21 if that's helpful.

22 **THE COURT:** All right. So what -- these are the
23 disagreements?

24 **MR. BORNSTEIN:** Yes, Your Honor. It's all the same
25 issue. I can explain quickly what the issue is.

1 **THE COURT:** All right. What is it?

2 **MR. BORNSTEIN:** And there are two. The first is
3 Your Honor issued a motion in limine ruling on foreign
4 investigations. There was a complaint in the initial set of
5 designations and documents that there were references to an
6 European investigation. So what we've done is we have
7 completely dropped the documents from the designations and we
8 have removed all testimony that refers to the investigation.

9 So if Your Honor were to read through what I just handed
10 up, you'll see there's no mention of Europe. There's no
11 mention of the investigations. There are references in the
12 testimony to the existence of a document, but the witness does
13 not say what the document is, does not mention the
14 investigation at all. So we think we have effectively purged
15 all references to the subject of the motion in limine ruling.

16 **THE COURT:** Okay.

17 **MR. KRAVIS:** Your Honor, our primary concern here is
18 this witness does not have any personal knowledge of what is in
19 the document. The witness says that on several occasions, says
20 that they do not have personal knowledge about the information
21 in the document. And at the time that the witness is being
22 questioned about 2013, they weren't even working on this stuff.
23 They were working in a completely different part of the
24 company.

25 The *Wright* and *Miller* and the majority of cases to address

1 it have said that when you're talking about a nonparty, a
2 30(b)(6) deposition being played at trial, the personal
3 knowledge requirement of Rule 602 still applies. The witness
4 doesn't have personal knowledge, and so the trial testimony is
5 not admissible.

6 **THE COURT:** Okay. I'll look at it.

7 Let's bring the jury in.

8 **MR. KRAVIS:** I have some legal authority on this
9 point. It's just two cases.

10 **THE COURT:** I don't need that.

11 **MR. KRAVIS:** Okay.

12 **THE COURT:** Let's bring the jury in. That will be
13 good.

14 **MR. POMERANTZ:** Your Honor, do you want the witness to
15 come in?

16 **THE COURT:** Who is it?

17 **MS. MOSKOWITZ:** Mr. James Kolotouros.

18 **THE COURT:** We can wait.

19 (Proceedings were heard in the presence of the jury:)

20 **THE CLERK:** Calling Civil 20-5671, Epic Games, Inc.
21 vs. Google LLC, and Multidistrict Litigation 21-2981, In re
22 Google Play Store Antitrust Litigation.

23 Counsel.

24 **MR. BORNSTEIN:** Good morning, Your Honor. Gary
25 Bornstein for Epic Games. I'm joined today by Michael Zaken,

1 Andrew Wiktor, Lauren Moskowitz, and Yonatan Even.

2 **MR. POMERANTZ:** Good morning, Your Honor. Glen
3 Pomerantz on behalf of Google. With me is Jonathan Kravis,
4 Steve Sparling, and Lauren Bell.

5 **THE COURT:** Okay. We're going to call the witness in.
6 I just realized I don't have my notebook, so I'm going to
7 go find that, but why don't you bring the person in.

8 Good morning, everyone. Monday through Thursday. That's
9 our schedule. Okay?

10 **TECH PERSONNEL:** Would you mind switching over to our
11 side?

12 **THE CLERK:** Okay.

13 **TECH PERSONNEL:** Thank you.

14 (Pause in proceedings.)

15 **MS. MOSKOWITZ:** Your Honor, Epic calls James
16 Kolotouros.

17 **THE CLERK:** Please stand and raise your right hand.

18 **JAMES KOLOTOUROS,**
19 called as a witness for the Plaintiff, having been duly sworn,
20 testified as follows:

21 **THE WITNESS:** I do.

22 **THE CLERK:** Thank you. Please be seated.

23 **THE WITNESS:** Thank you.

24 **THE CLERK:** Please state your full name for the Court
25 and spell your last name.

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1 **THE WITNESS:** James Kolotouros, K-O-L-O-T-O-U-R-O-S.

2 **THE CLERK:** Thank you.

3 **MS. MOSKOWITZ:** Your Honor, may I proceed?

4 **THE COURT:** Please.

5 **MS. MOSKOWITZ:** Thank you.

6 **DIRECT EXAMINATION**

7 **BY MS. MOSKOWITZ:**

8 **Q.** Good morning, Mr. Kolotouros.

9 **A.** Good morning.

10 **Q.** My name is Lauren Moskowitz and I represent Epic, and I'll
11 be asking you questions this morning.

12 **A.** Okay.

13 **Q.** And you have some binders in front of you. Do you have
14 access to those?

15 **A.** I do.

16 **Q.** Thank you.

17 You have worked at Google since 2003; is that correct?

18 **A.** That is correct.

19 **Q.** And your current title is vice president Android
20 platform's partnerships?

21 **A.** Android platform partnerships, that's correct.

22 **Q.** And since January 2014, you've been the executive
23 responsible for managing Google's day-to-day partnerships with
24 Android mobile OEMs; is that right?

25 **A.** One of the executives and managing a large block of those

1 OEMs but not all of them, that's correct.

2 Q. The responsibility that you have includes overseeing the
3 administration and negotiation of contracts that Google enters
4 into with Android mobile OEMs; right?

5 A. Yes.

6 Q. And you manage a team of approximately 60 people; is that
7 right?

8 A. Right now it is approximately 50.

9 Q. Who do you consider part of Android leadership in the 2019
10 to 2020 time period?

11 A. I would -- Hiroshi Lockheimer overall, Sameer Samat, Jamie
12 Rosenberg on the partnership side. Those are the three that I
13 would say are the most prominent from the standpoint of
14 leadership for the organization.

15 Q. And those were senior leaders at that time?

16 A. Yes.

17 Q. Google enters into various types of agreements with OEMs
18 that manufactured Android smartphones; is that right?

19 A. It is.

20 Q. And one of the agreements -- we'll just walk through some
21 of them at a high level and then we'll dig down -- one of the
22 agreements Google enters into with OEMs is the Revenue Share
23 Agreement; right?

24 A. With a small subset of them, yes.

25 Q. One of the agreements that Google enters into with certain

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1 OEMs is Revenue Share Agreements; right?

2 A. Yes.

3 Q. The Revenue Share Agreement is sometimes known as RSA; is
4 that right?

5 A. Yes.

6 Q. And you oversee negotiation of RSAs between Google and
7 OEMs?

8 A. Yes.

9 Q. And you are involved in setting the strategy in connection
10 with RSAs?

11 A. I was involved with setting the strategy, yes.

12 Q. And Margaret Lam was also involved in setting strategy?

13 A. Yes.

14 Q. And there have been several versions of the form contract
15 for RSAs over the years; is that fair?

16 A. Yes.

17 Q. And for the period of 2016 to 2019, the RSAs that Google
18 entered into with OEMs was known as RSA 2.0; is that right?

19 A. It is.

20 Q. And the 2.0 indicated that that was Version 2 of the
21 template or the form of the RSA; right?

22 A. Yes.

23 Q. And in 2019 Google began entering into what has been
24 referred to as the RSA 3.0 agreements with OEMs; right?

25 A. With the exception of Samsung, yes.

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1 Q. But when the RSAs were entered into, they were known as
2 RSA 3.0 with the OEMs; is that right?

3 A. That is correct.

4 Q. And the RSA 3.0 agreements are now the third iteration of
5 the form contract?

6 A. That is correct.

7 Q. And under the RSA 3.0 agreements, OEMs can enroll their
8 devices in three different tiers; is that right?

9 A. That is correct.

10 Q. And each tier has different requirements that the OEM must
11 follow in order to qualify; right?

12 A. Yes.

13 Q. And as OEMs enroll their devices in higher tiers, they
14 take on more obligations and the revenue share they're entitled
15 to increases; right?

16 A. That is correct.

17 Q. The highest RSA tier is called the premier tier; right?

18 A. It is.

19 Q. And we also may see that as the Google forward tier?

20 A. That is correct, yes.

21 Q. So in order to qualify for the premier tier, an OEM may
22 not install any app store on their device other than
23 Google Play; right?

24 A. That is correct.

25 Q. And that's a way of saying that Google Play has

1 exclusivity for the devices that are in the premier tier; fair?

2 **A.** For the out-of-box experience, that is correct.

3 **Q.** And by "out-of-box" you mean Google Play has exclusivity
4 for all apps preinstalled on any device enrolled in the premier
5 tier?

6 **A.** I'm sorry. Can you repeat the question?

7 **Q.** When you say out-of-the-box, you're referring to what apps
8 appear preinstalled on an OEM device; right?

9 **A.** That is correct.

10 **Q.** Okay. So Google Play has exclusivity for all devices
11 enrolled in the premier tier out of the box when the phone is
12 sold to customers?

13 **A.** With respect to stores, that is correct.

14 **Q.** Another one of the agreements that Google enters into with
15 OEMs is called the Mobile Application Distribution Agreement?

16 **A.** Yes.

17 **Q.** And that's why we call it the MADA because I can't
18 pronounce it?

19 **A.** That is correct.

20 **Q.** So you and your team are involved in setting the strategy
21 for the MADA as well?

22 **A.** Yes.

23 **Q.** And the MADA is a license to distribute all Google
24 services that are available on Android-compatible devices;
25 right?

1 A. That is correct.

2 Q. Now, that bundle of Google apps and services is sometimes
3 known as Google Mobile Services or GMS; is that right?

4 A. Yes.

5 Q. The MADA also imposes a number of requirements that OEMs
6 must comply with when they enter into that agreement; right?

7 A. If they preload the applications, yes.

8 Q. And, for example, the MADA requires OEMs to install
9 Google Play on the default home screen; right?

10 A. If they elect to preload the apps, yes.

11 Q. Has any OEM ever entered into a MADA without preinstalling
12 the bundle of GMS apps?

13 A. Not that I'm aware of.

14 Q. Okay. So can we agree that we don't need that caveat for
15 purposes of the questioning today; that Google is requiring
16 under the MADA all OEMs who sign it to install Google Play on
17 the default home screen?

18 A. Okay.

19 Q. Agreed? That's correct?

20 A. The requirement in connection with the bundle, yes, that's
21 correct.

22 Q. Google also enters into another agreement with OEMs called
23 the Android Compatibility Commitment?

24 A. Yes.

25 Q. And that use to be called -- well, withdrawn.

1 The Android Compatibility Commitment is sometimes referred
2 to as the ACC?

3 A. Yes.

4 Q. And that ACC replaced a similar agreement that was called
5 the Anti-Fragmentation Agreement?

6 A. That is correct.

7 Q. And those agreements, the ACC, basically require OEMs that
8 sign it to use the same version of Android that Google is using
9 for Android; right?

10 A. I would frame it slightly differently.

11 Q. Go ahead.

12 A. It asks that OEMs deploy or distribute phones or other --
13 or tablets that are compatible.

14 Q. That are compatible with the version that Google is
15 writing all of its apps, for example?

16 A. Writing for the specific phones, right, that's correct.

17 Q. So Google structured the RSA, the MADA, and the ACC so
18 that OEMs cannot enter into certain of those agreements unless
19 they enter into others; right?

20 A. I correlate the ACC and the MADA as baseline agreements
21 with the RSA being on top.

22 Q. Right. So what that means is an OEM must enter into an
23 ACC in order to be eligible for the MADA; correct?

24 A. That is correct.

25 Q. And there's not any Android OEM that has signed an ACC

1 that has not also signed a MADA; correct?

2 A. I believe that's the case, yes.

3 Q. And an OEM must have entered into a MADA to be eligible to
4 sign a Revenue Share Agreement; right?

5 A. With one exception, yes.

6 Q. What -- is your exception Huawei?

7 A. That's correct.

8 Q. Okay. We'll get to that.

9 So all OEMs, setting aside Huawei, who have entered
10 into -- well, has Huawei entered into a Revenue Share
11 Agreement?

12 A. Yes.

13 Q. Okay. So -- and they do not have a MADA?

14 A. That is correct.

15 Q. Is that an issue to do with China?

16 A. It has an issue to do with the entity list placement that
17 they were put under in May -- an entity list placement in
18 connection with the Department of Commerce ruling in May of
19 2019.

20 Q. Right. So Google is prohibited from entering into that
21 contract with Huawei?

22 A. Essentially I believe that is correct, yes.

23 Q. Okay. So setting that legal restriction aside, all OEMs
24 who have entered into a Revenue Share Agreement has also signed
25 a MADA; correct?

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1 **A.** Yes.

2 **Q.** So let's please turn to your binder to Exhibit 647.

3 Let me know when you have that. I will put it on the
4 screen eventually, so hopefully it will be less cumbersome, but
5 you have to look at it first before I get to do that.

6 **A.** Okay.

7 **Q.** Do you have that open in front of you?

8 **A.** I do.

9 **Q.** All right. This is a May 2019 Android 101 slide deck that
10 you presented internally at Google; correct?

11 **A.** Yes.

12 **MS. MOSKOWITZ:** And, Your Honor, I move to admit
13 Exhibit 647 into evidence.

14 **MR. POMERANTZ:** No objection, Your Honor.

15 **THE COURT:** It's admitted.

16 (Trial Exhibit 647 received in evidence.)

17 **MS. MOSKOWITZ:** All right. Let's, please, publish
18 that.

19 **BY MS. MOSKOWITZ:**

20 **Q.** This deck that you'll see now on the screen in front of
21 you, this slide deck was prepared and approved by you and
22 others on your team; right?

23 **A.** That is correct.

24 **Q.** Let's turn to Slide 14, please. And you'll have that on
25 the screen.

1 There's a set of bullets on this slide under the heading
2 "What is Google Play Services/GMS Core?" Do you see that?

3 **A.** I do.

4 **Q.** So in the first bullet this is explaining that Google Play
5 provides a set of Google APIs that help support functionality
6 of all Android applications. Do you see that?

7 **A.** I do.

8 **Q.** And I think that might be the first time the jury's
9 hearing APIs here, so I just want to see if we can maybe
10 explain in general terms. I'm not a computer scientist, but
11 let's just try and see if I can get it close enough.

12 **A.** Okay.

13 **Q.** So an API in this context is something that allows apps to
14 access certain features of Android; is that fair?

15 **A.** I think I would characterize them as a set of utilities or
16 tools that developers can use to make their apps better.

17 **Q.** So I'm trying to simplify. I'm sure that's correct.

18 An API would be used to connect an app to Google's
19 location functionality, for example?

20 **A.** Yes.

21 **Q.** All right. So, like, I never played it, Pokemon GO might
22 need location services to help people play; is that fair?

23 **A.** I have also not played, but I assume that's a good use
24 case, yes.

25 **Q.** Okay. And so what this is saying here -- and it lists

1 location. It lists maps, analytics, location. Those are all
2 things that Google makes available to folks who sign the MADA
3 to allow their apps to connect to Google's functions and make
4 their apps better on Android?

5 **A.** I think the APIs are made available to developers, and
6 then these services are also put onto phones as well so they
7 can work well together.

8 **Q.** Right. So they're put on the phone by the OEMs?

9 **A.** Yes, that is correct.

10 **Q.** All right. And so these APIs that we've just been
11 discussing, and it says the same thing here, are sometimes
12 known as the GMS core APIs; right?

13 **A.** Yes.

14 **Q.** And the second bullet here underneath on the screen says
15 that the GMS core APIs that we were just discussing were used
16 by GMS. Those are the Google apps?

17 **A.** Yes.

18 **Q.** And also hundreds of thousands of third-party apps. Do
19 you see that?

20 **A.** I do.

21 **Q.** And the third bullet explains that as of 2019, which is
22 the date of this deck, 826 out of the top 1,000 Android apps
23 used one or more GMS core API?

24 **A.** Yes.

25 **Q.** And it lists here some examples: Facebook, WhatsApp,

1 Twitter, and many other apps. Do you see that?

2 A. I do.

3 Q. So the GMS core APIs are part of the GMS bundle that OEMs
4 license through the MADA; correct?

5 A. That is correct.

6 Q. And that means that an OEM cannot offer a smartphone that
7 incorporates these APIs unless the OEM signs a MADA; right?

8 A. That's correct.

9 Q. And so the MADA in turn, as we've discussed, requires the
10 OEM to preinstall Google Play on the default home screen;
11 right?

12 A. It does, yes.

13 Q. So what that means, putting it together, is that if an OEM
14 does not install Google Play on the home screen, it cannot
15 offer these APIs on that phone?

16 A. That is correct.

17 Q. So through the MADA, Google requires that if OEMs want to
18 offer smartphones that are capable of running most of the top
19 Android apps, those OEMs must preinstall Google Play on the
20 default home screen; correct?

21 A. Yes.

22 Q. You can take that down.

23 Let's talk a little bit about preinstallation. We just
24 mentioned that term a moment ago.

25 Preinstallation of an app refers to when an app is

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1 installed on a device before it is unboxed by the consumer;
2 correct?

3 A. Yes.

4 Q. So preinstallation removes the need for the user to
5 actually download the app; right?

6 A. It does.

7 Q. And a preinstalled app is really just there when the
8 consumer unboxes it, as you put it; right?

9 A. Yes.

10 Q. The MADA requires the OEMs to preinstall a bundle of
11 Google apps; correct?

12 A. Yes.

13 Q. So under the MADA, Google has the ability in its sole
14 discretion to change the apps that are required as part of that
15 bundle; right?

16 A. Yes.

17 Q. So OEMs don't get to pick and choose among the bundle
18 which ones they want to take and which ones they don't;
19 correct?

20 A. Among the bundle, no, that is correct.

21 Q. And OEMs must preinstall, just to be clear, the entire
22 bundle that Google requires under the MADA?

23 A. Yes.

24 Q. And you cannot recall any instance when Google granted any
25 OEM any exception to the requirement that they do install the

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1 full bundle of GMS apps; right?

2 A. Yes, that is correct.

3 Q. Samsung and Motorola manufacture the majority of Android
4 phones for sale in the United States; correct?

5 A. I believe that is correct, yes.

6 Q. So they're among Google's largest and most important OEM
7 partners; is that fair?

8 A. Yes.

9 Q. And Samsung has asked Google to let Samsung not Google
10 select which Google apps to preinstall; right?

11 A. Yes.

12 Q. And Google did not accommodate that request; right?

13 A. We did not.

14 Q. And some OEMs have raised issues that they did not like
15 certain of the apps in the bundle and wanted Google to allow
16 them not to preinstall those apps; right? That's happened
17 before?

18 A. It has happened, yes.

19 Q. And Google has said no to each of those requests; right?

20 A. That is correct.

21 Q. Let's please turn in your binder to Exhibit 617, please.

22 This is a presentation called "MADA and RSA Android
23 Commercial Agreements" dated August 2019. Do you see that?

24 A. I do.

25 MS. MOSKOWITZ: Your Honor, I move to admit

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1 Exhibit 617 into evidence.

2 **MR. POMERANTZ:** No objection, Your Honor.

3 **THE COURT:** It is admitted.

4 (Trial Exhibit 617 received in evidence.)

5 **BY MS. MOSKOWITZ:**

6 **Q.** All right. Let's turn to the slide ending 4, please; or
7 page 4 is a much simpler way of saying that.

8 This slide, which is also on the screen, sir, reflects the
9 various preinstallation requirements that are in the MADA or
10 were as of August 2019; correct?

11 **A.** Yes.

12 **Q.** And is that the same as today?

13 **A.** I believe so, yes.

14 **Q.** And the slide is conveying that OEMs would be required to
15 preinstall 11 Google apps as part of the bundle required under
16 the MADA; right?

17 **A.** Yes, as part of the bundle.

18 **Q.** And, again, the bundle is not optional; it's mandatory.
19 If they take one, they take them all; right?

20 **A.** That is correct.

21 **Q.** And Google Play is the icon we see all the way on the left
22 before that plus sign; right?

23 **A.** Yes.

24 **Q.** So that's one of the required apps we've established;
25 right?

1 A. Yes.

2 Q. And the apps are then broken into two buckets you see here
3 by nondeletable apps and deletable apps; right?

4 A. Yes.

5 Q. So what that's saying in terms deletable or not, a user
6 who does not want to have one or more of the nondeletable apps
7 on his or her Android phone is not allowed to remove them;
8 correct?

9 A. That is correct.

10 Q. And Google Play is a nondeletable app; right?

11 A. Yes.

12 Q. So Google Play cannot be deleted even by a user who
13 doesn't want it; right?

14 A. The app can be moved but not deleted, that's correct.

15 Q. Right. It can be moved somewhere, but it must remain on
16 the phone?

17 A. That is correct.

18 Q. And, in fact, if it's removed, those APIs we were just
19 talking about don't work? The apps won't work?

20 A. That's beyond my technical competence, but I believe
21 that's the case.

22 Q. And in addition to dictating which apps the OEMs must
23 preinstall, the MADA also dictates where on the device OEMs
24 must place certain of those apps; right?

25 A. The icons for some of them, yes.

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1 **Q.** So as we discussed already, the MADA requires the
2 Google Play app to be installed on the default home screen of
3 all devices; right?

4 **A.** Yes.

5 **Q.** And Google Play is required to be on the home screen as
6 opposed to some other screen because users are more likely to
7 see and use it when it's on the default home screen; correct?

8 **A.** More likely to see and try, yes.

9 **Q.** So the answer is, yes, Google Play requires -- Google
10 requires Google Play to be on the default home screen as
11 opposed to any other screen because users are more likely to
12 see it and use it when it's on that default home screen; yes?

13 **A.** Okay. Yes.

14 **Q.** You can put that away.

15 So let's look at how these requirements actually show up
16 in the actual MADA contract so we can do some translation of
17 that.

18 Let's, please, turn to your binder in Exhibit 5255,
19 please.

20 This is a true and correct copy of the MADA entered into
21 between Google and Samsung dated March 1, 2017; is that right?

22 **A.** It is.

23 **MS. MOSKOWITZ:** Your Honor, I move Exhibit 5255 into
24 evidence.

25 **MR. POMERANTZ:** No objection, Your Honor.

1 **THE COURT:** It's admitted.

2 (Trial Exhibit 5255 received in evidence.)

3 **BY MS. MOSKOWITZ:**

4 **Q.** All right. Let's just orient ourselves on the front here.
5 You can see this is the MADA between Samsung and Google dated
6 March 1, 2017; right?

7 **A.** It is.

8 **Q.** All right. Let's turn to page 6, please.

9 At the bottom of this page there's a Section 3.3,
10 "Placement Requirements Device Setup." Do you see that? And
11 it's also on the screen.

12 **A.** Yes.

13 **Q.** All right. So Section 3.3 is the provision we were just
14 discussing that requires the preinstallation of the bundle of
15 Google apps; right?

16 **A.** Yes.

17 **Q.** And it says here unless otherwise approved by Google in
18 writing, for each device Samsung will do certain things, and it
19 has a list; right?

20 **A.** Yes.

21 **Q.** So part one is the part that's talking about the --
22 installing the bundle of the 11 mandatory apps that we were
23 just discussing; right?

24 **A.** Yes.

25 **Q.** And that included Maps, YouTube, Google Play, et cetera?

1 A. That's correct, yes.

2 Q. All right. Now, under part two, that is the part where
3 Samsung must preinstall several items on the default home
4 screen of the smartphone; right?

5 A. Yes.

6 Q. And we see in part C that's where Google Play appears?

7 A. Yes.

8 Q. All right. We're going to keep discussing the MADA, but I
9 think we can put the contract aside for now.

10 So let's go back to Exhibit 617, please, on page 3, which
11 we will put up on the screen.

12 This slide here is giving an overview of the MADA; is that
13 fair?

14 A. Yes.

15 Q. And the first bullet at the top of the slide states that
16 "The MADA secures baseline distribution of our apps on
17 Android"; right?

18 A. Yes.

19 Q. And "our apps" is referring to Google apps including
20 Google Play?

21 A. Yes.

22 Q. And the first -- sorry.

23 In the lower left-hand corner you see this coverage box
24 there?

25 A. Yes.

1 Q. And that box is communicating that outside of China there
2 are 2.3 or were 2.3 billion active Android devices that had
3 Google services on it; right?

4 A. Yes.

5 Q. And "active devices" means devices currently in use by
6 users?

7 A. Yes.

8 Q. So this is saying that as of the time of this document,
9 2.3 billion Android devices currently in use came preinstalled
10 with the bundle of Google's apps required under the MADA?

11 A. Yes.

12 Q. The number of active devices with GMS is actually closer
13 to 3 billion today; right?

14 A. I think that's correct, yes.

15 Q. And, in fact, the coverage box here says that there are
16 approximately 1 billion activations, new activations, per year
17 of Android devices that come with Google services, including
18 Google Play preinstalled?

19 A. I think it's closer to 900 million per year now but, yes.

20 Q. Okay. All right. Approximately 1 billion; fair?

21 A. Approximately 1 billion, yes.

22 Q. All right. And what that 900 million or approximately
23 1 billion reflects, just to be clear, is that there are
24 approximately that number, almost a billion, new activations of
25 Android devices per year that include Google services,

1 including Google Play, preinstalled?

2 A. Yes.

3 Q. You are not aware of any Android smartphone device that
4 was activated without the MADA bundle outside of China;
5 correct?

6 A. That is correct, yes.

7 Q. And China, just so that the jury's clear, is an exception
8 because Google Play is actually not permitted in China; right?

9 A. That is correct I believe, yes.

10 Q. And so most contracts between Google and OEMs sort of
11 exclude China; right?

12 A. I think a large number of Google services don't work in
13 China but Play is one of them, yes.

14 Q. So Google Play -- because Google Play and Google Mobile
15 Services are not offered in China, OEMs cannot preinstall
16 Google's apps on smartphones that are distributed within China?

17 A. That is correct.

18 Q. But so setting that aside, to your knowledge, every
19 Android smartphone outside of China comes preinstalled with
20 Google Play?

21 A. That is my understanding, yes.

22 Q. All right. We can take that document down.

23 So we've been discussing a bit the MADA for a while, and
24 we've discussed how under the MADA Google Play is required to
25 be installed on the pre -- on the default home screen for

1 Android devices; right?

2 A. Yes.

3 Q. And so the MADA requires Google Play to be preinstalled on
4 the default home screen but the MADA itself doesn't forbid OEMs
5 from also preinstalling other app stores on their devices;
6 right?

7 A. That is correct.

8 Q. So -- but you are aware, are you not, that while every
9 Android phone comes with Google Play preinstalled, it is not
10 the case that every Android phone also comes with an OEM app
11 store preinstalled; right?

12 A. I'm sorry. Can you repeat the question again?

13 Q. Sure.

14 So all the phones have Google Play; right? We're together
15 on that one so far?

16 A. Okay.

17 Q. But not every phone also has an OEM app store
18 preinstalled; correct?

19 A. Not every phone, yes, that is correct.

20 Q. And, in fact, we've talked about the RSA earlier, any OEM
21 who has enrolled any of those devices in the premier tier
22 actually are contractually forbidden from installing their own
23 OEM app store on those devices; right?

24 A. As part of the out-of-box, yes, that is correct.

25 Q. Right. So if someone were to say that there are OEM

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1 stores on all Android devices, that's false; right?

2 **A.** That is correct.

3 **Q.** It is correct that that is wrong?

4 **A.** I'm sorry, but --

5 **Q.** Yeah, maybe we have too many negatives. I just want to
6 make sure that we're clear.

7 If someone were to say that OEM stores are on all Android
8 devices, that is a false statement; correct?

9 **A.** Correct.

10 **Q.** Let's just switch topics to the RSA, and please turn in
11 your binder to Exhibit 623, please.

12 This is an e-mail chain from July 8, 2014, between you and
13 others at Google; is that right?

14 **A.** Yes.

15 **MS. MOSKOWITZ:** Your Honor, I move Exhibit 623 into
16 evidence.

17 **MR. POMERANTZ:** No objection, Your Honor.

18 **THE COURT:** It is admitted.

19 (Trial Exhibit 623 received in evidence.)

20 **BY MS. MOSKOWITZ:**

21 **Q.** All right. We're going to walk through this chain and
22 we're going to start at the back, which is the first e-mail in
23 the chain, please, which is from David -- is it Thevenon?

24 **A.** Thevenon, yes.

25 **Q.** Okay. And he was your manager at the time?

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1 A. Yes.

2 Q. And Mr. Thevenon asked you for some context in this bottom
3 e-mail for why Google was pursuing revenue share with certain
4 counterparties; right?

5 A. Yes.

6 Q. And right above that you ask a Tanuj Raja from your team
7 to give some response? How did I do on that name?

8 A. That's just right.

9 Q. Okay. Great.

10 So you asked Mr. Raja to give some responses on that?

11 A. I did.

12 Q. All right. And Mr. Raja provides that information on the
13 top half of the same page.

14 And let's zoom in on those last two paragraphs.

15 Do you see where I am?

16 A. I do.

17 Q. And those are the last two paragraphs of Mr. Raja's
18 e-mail?

19 A. Yes.

20 Q. So the second-to-last paragraph I have here that starts
21 "In addition," do you see that?

22 A. Yes.

23 Q. It says (as read):

24 "In addition, I worry about the Amazon store."

25 Right?

1 A. Yes.

2 Q. And he refers to the Amazon store as having 200,000 apps
3 and growing; right?

4 A. Yes.

5 Q. And he's worried about the Amazon store getting a foothold
6 in the Android world; right?

7 A. Yes.

8 Q. And he wrote further that (as read):

9 "Google cannot stop OEMs from preloading the Amazon
10 App Store due to anticompetitive concerns on the MADA 2.0
11 only."

12 Right?

13 A. That's what he wrote, yes.

14 Q. But he continues to say (as read):

15 "We can do this through revenue share deals."

16 Right?

17 A. Yes.

18 Q. So Mr. Raja is saying that through revenue share deals,
19 there can be provisions that prevent OEMs from preloading
20 competitive app stores to Google Play?

21 A. Yes, that's what he's saying.

22 Q. And in the last paragraph of his e-mail here, Mr. Raja
23 wrote that Google should work with those OEMs to have stricter
24 placement requirements through revenue share as possibly one
25 solution; right?

1 A. Yes.

2 Q. He said that doing so would solve a couple of issues, one
3 of which is it would help stem the tide of emerging app stores;
4 right?

5 A. Among other things, yes.

6 Q. Right. But one of the issues he says this would solve is
7 that it helps stem the tide of emerging app stores; correct?

8 A. That's what he wrote, yes.

9 Q. And that was the last paragraph of his e-mail; right?

10 A. Yes.

11 Q. Let's go to the first page where you forwarded Mr. Raja's
12 e-mail to Mr. Thevenon; right?

13 A. Yes.

14 Q. And you told Mr. Thevenon, your manager, that Mr. Raja's
15 last paragraph is the key; right?

16 A. Yes.

17 Q. And that's the paragraph we just looked at about "helps
18 stem the tide of emerging app stores"; right?

19 A. And the consumer experience fragmentation, yes.

20 Q. And Mr. Thevenon asked you why Google doesn't put
21 everything in the MADA. He asked you: Is it anticompetitive
22 concerns or something more than that; right?

23 A. Yes.

24 Q. And in your response you suggested (as read):

25 "This might be better discussed in person as opposed

1 to writing."

2 Right? That's at the top?

3 **A.** I believe I was --

4 **Q.** The top of the e-mail.

5 **A.** Yes, better for an in-person discussion.

6 **Q.** Right. "So let's discuss in the car"?

7 **A.** Yeah.

8 **Q.** And you said, though (as read):

9 "Long story short, putting everything in the MADA is
10 an impossibility."

11 Right?

12 **A.** Yes.

13 **Q.** All right. We can take that down.

14 In 2019, as we discussed, Google began working on the next
15 iteration of RSAs which eventually became RSA 3.0; right?

16 **A.** Yes.

17 **Q.** And you were part of the team that evaluated the strategy
18 and what form the RSA agreements -- the RSA 3.0 agreements
19 would take?

20 **A.** Yes.

21 **Q.** The Business Council, we've heard a little bit about, the
22 Business Council at Google is a group of senior executives that
23 approve certain deals between Google and third parties?

24 **A.** Yes.

25 **Q.** And in 2019 the Business Council included, among others,

1 Philipp Schindler and Ruth Porat?

2 **A.** I believe so, yes.

3 **Q.** And those are very senior executives at Google; right?

4 **A.** Yes.

5 **Q.** For example, Ms. Porat was the chief financial officer of
6 the entire Google company?

7 **A.** That is correct.

8 **Q.** Let's turn in your binder, please, to Exhibit 624.

9 Are you there?

10 **A.** Mm-hmm.

11 **Q.** Thank you.

12 Exhibit 624 is a presentation deck that was presented to
13 the Business Council about RSA 3.0; correct?

14 **A.** Correct.

15 **MS. MOSKOWITZ:** Your Honor, I move to admit 624 into
16 evidence.

17 **MR. POMERANTZ:** No objection, Your Honor.

18 **THE COURT:** It is admitted.

19 (Trial Exhibit 624 received in evidence.)

20 **BY MS. MOSKOWITZ:**

21 **Q.** And we'll have that up on the screen.

22 You're familiar with and contributed to this presentation;
23 right?

24 **A.** I don't know that I contributed, but I'm familiar with the
25 presentation, yes.

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1 Q. You're familiar with it?

2 A. Yes.

3 Q. And let's turn to the second slide, please.

4 This is an executive summary. Do you see that?

5 A. Yes.

6 Q. And it's on the screen as well, sir?

7 A. Yes.

8 Q. All right. Up at the top there's a heading that the

9 Business Council is fine-tuning the Revenue Share Agreement.

10 Do you see that?

11 A. I do.

12 Q. And the slide is communicating to the Business Council

13 that the purpose of the proposed changes to the RSA was, quote,

14 "to protect Google from key strategic risks." Do you see that?

15 A. I do see it, yes.

16 Q. And then there are a number of bullets to give more

17 context to that; right?

18 A. Yes.

19 Q. So on the second bullet here, the one that says "Since

20 2016" -- do you see that?

21 A. I do.

22 Q. -- it says (as read):

23 "Android dynamics have changed and Google has had

24 higher exposure of search-and-play revenue than before."

25 Do you see that?

1 A. I do.

2 Q. And just to be clear, higher exposure of revenue means
3 risk of loss of revenue?

4 A. I believe so, yes.

5 Q. So the reason for the risk of loss of Play in search
6 revenue is discussed in the bullet right below that; right?

7 A. Yes.

8 Q. And what that says is that Chinese OEMs and Samsung are
9 actively investing in creating own app and services ecosystems;
10 right?

11 A. Yes.

12 Q. So the Chinese OEMs and Samsung were actively investing in
13 creating their own bundles of apps and services that could
14 compete with the Google suite of apps and services?

15 A. That is -- yes, that is correct, that's what this says.

16 Q. So all of those OEMs that are listed here, the Chinese
17 OEMs and Samsung, had the potential to have app stores that
18 competed with Google Play in markets outside of China?

19 A. Yes.

20 Q. And Chinese OEMs, we may -- I don't think we've heard who
21 those are -- that's a reference to Huawei, Xiaomi, Oppo, and
22 Vivo?

23 A. I think Huawei not as much at this point in time, but
24 Xiaomi, OPlus, Vivo, yes.

25 Q. Okay. And Xiaomi is X-I-A-O-M-I?

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1 A. I believe so, yes. I'm sorry. Sorry for catching me on
2 the spelling.

3 Q. I'm catching myself on the pronunciation because it
4 doesn't look like that's how it should be spelled.

5 These all -- these --

6 A. X-I-A-O-M-I.

7 Q. Yes.

8 A. I know it by keystroke not by memory. My apologies.

9 Q. So these Chinese OEMs were all rapidly growing OEMs at the
10 time; right?

11 A. They were.

12 Q. And they were rapidly growing outside of China? That's
13 the point?

14 A. Yes.

15 Q. So those Chinese OEMs combined up to around 22 percent or
16 so of all Android device activations outside of China; right?

17 A. That sounds about right, yes.

18 Q. And those Chinese OEMs also had experience with their own
19 app stores by virtue of having to create and operate their own
20 app stores in the Chinese market?

21 A. That is correct.

22 Q. So all of those OEMs had the potential to have app stores
23 that competed with Google Play outside of China?

24 A. That is correct.

25 Q. So, by the way, the heading here that we're just looking

1 at says "ex Samsung." Do you see that?

2 A. I do.

3 Q. So that's referring to the fact that the RSA 3.0 changes
4 were targeted at this time at OEMs other than Samsung; right?

5 A. That is correct.

6 Q. And Samsung was the subject of a separate project, not
7 3.0; right?

8 A. That is correct, a separate revenue share deal.

9 Q. And the separate project at this time was Project Banyan;
10 right?

11 A. That is correct, but I wouldn't correlate it to revenue
12 share deals as much as a separate project.

13 Q. Right. It was a separate project. RSA 3.0 was not
14 designed to target Samsung. Project Banyan was?

15 A. That is correct, yes.

16 Q. Okay. And -- but RSA 3.0 and Project Banyan were all part
17 of an overall strategy; correct?

18 A. All -- yes.

19 Q. And Project Hug was also a component of that same
20 strategy?

21 A. Not as close to Project Hug, but I believe -- I'm not -- I
22 don't want to speak to Project Hug. I'm not as close to it.

23 Q. All right. Let's just briefly turn to Slide 18, please.

24 We can just go to the slide. No highlighting needed for
25 now.

1 So you see is this title here "The Premier Tier" -- this
2 is RSA 3.0; right?

3 **A.** Yes.

4 **Q.** -- "protects against Play risks with OEMs complimenting
5 Hug and Banyan"; right?

6 **A.** Yes.

7 **Q.** So this slide is talking about the premier tier and saying
8 that it is part of an overall strategy with Project Hug and
9 Project Banyan; right?

10 **A.** Yes.

11 **Q.** And you were, I think you just mentioned, not involved in
12 Project Hug?

13 **A.** I was not.

14 **Q.** All right. So for once we are not going to be talking
15 about Project Hug for a little while --

16 **A.** Okay.

17 **Q.** -- but you were involved with Project Banyan; right?

18 **A.** I was.

19 **Q.** Okay. And so these -- Project Hug, Project Banyan, and
20 RSA 3.0 as presented to the Business Council were all
21 risk-mitigation strategies to protect Google Play from
22 competition on the Android app platform; correct?

23 **A.** Among other reasons, yes.

24 **Q.** I'll ask one more time.

25 Project Hug and Project Banyan and the premier tier as

1 presented to the Business Council were all risk-mitigation
2 strategies to protect Google Play from competition on the
3 Android app platform; right?

4 **A.** Among other reasons, yes.

5 **MS. MOSKOWITZ:** Your Honor, page 307, lines 13 to 19,
6 in Tab 1 of your deposition transcript binder, please.

7 **THE COURT:** That's fine.

8 **MS. MOSKOWITZ:** 13 to 19, please. Page 307.

9 **BY MS. MOSKOWITZ:**

10 **Q.** You gave a deposition in this case?

11 **A.** Yes.

12 **Q.** And you were under oath in that deposition?

13 **A.** I was.

14 **Q.** And you told the truth?

15 **A.** I did.

16 **Q.** All right. You were asked the following question and gave
17 the following answer (as read):

18 **"QUESTION:** So Project Hug and Project Banyan and the
19 premier tier as presented to the Business Council were all
20 risk-mitigation strategies to protect for Google Play from
21 competition on the Android app platform; correct?

22 **"ANSWER:** That's what this slide would indicate."

23 That was your testimony?

24 **A.** Yes.

25 **Q.** All right. Let's put that away for a moment, I think.

1 I lied. Let's go back to 624, page 2. We're back to the
2 executive summary.

3 A. Okay.

4 Q. It will come up on the screen momentarily.

5 All right. So now we're going to look at the ask. "The
6 ask" meaning what the team was asking the Business Council for
7 to mitigate these risks; right?

8 A. Yes.

9 Q. All right. So the deal team wanted approval from the
10 Business Council to pay revenue share, quote, "to secure
11 platform protections for Search and Play and critical apps
12 protections on more devices"; right?

13 A. Yes.

14 Q. So the team here was asking the Business Council to spend
15 \$2.9 billion in 2020, which would grow each year, year over
16 year, to 4.5 billion in 2023; correct?

17 A. Yes.

18 Q. So doing some light math, we're talking about at least
19 \$15 billion or more over the four years?

20 A. Plus or minus, yes.

21 Q. And all of that money would take the form of revenue share
22 both from Google Search and Google Play for devices enrolled in
23 the RSA 3.0 agreements; right?

24 A. Yes.

25 Q. Now, the second bullet under the ask talks about Google

1 offering up to 16 percent Google Play revenue shares to OEMs.

2 Do you see that?

3 A. I do.

4 Q. And the way that's going to be spent, it says, is that was
5 going to go to key Chinese OEMs; right?

6 A. Yes.

7 Q. And it's juxtaposing that it would be more like 4 to
8 8 percent revenue share for Google Play for smaller OEMs;
9 right?

10 A. Yes.

11 Q. So it says that Google Play would be paying that
12 additional amount of revenue share, quote, "to secure Play
13 exclusivity"; right?

14 A. Yes.

15 Q. And, again, by "Play exclusivity," that means that no
16 other app store or app launcher or app installer could be
17 preinstalled by an OEM?

18 A. That is correct.

19 Q. And the Play exclusivity terms restrict OEMs from
20 installing any app store that competed with Google Play?

21 A. Yes. Prevented OEMs from preinstalling, that's correct.

22 Q. Right. So the Play exclusivity terms restricted OEMs from
23 preinstalling any app store that competed with Google Play?

24 A. Yes.

25 Q. Including their own app stores?

1 A. I believe so, yes.

2 Q. Let's turn to Slide 10, please.

3 So this is talking about how they were going to be
4 spending an extra 600 million that they were asking for
5 approval from the Business Council; right?

6 A. Yes.

7 Q. And so according to this slide, Google was planning to
8 spend that \$600 million to protect Play and Search through
9 these exclusivity terms we've been discussing; right?

10 A. Yes.

11 Q. And this incremental spend is what they wanted on top of
12 what was already authorized under RSA 2.0; right?

13 A. I believe so, yes.

14 Q. And on this slide you see that the deal team was expecting
15 to spend \$80 million of that \$600 million in Google Play
16 revenue share on just three OEMs, Oppo, Vivo, and Transium?

17 A. Yes.

18 Q. And the deal team told the Business Council that that
19 \$80 million would hedge \$1 billion in noncovered Google Play
20 revenue for those Chinese OEMs; right?

21 A. Yes.

22 Q. So with respect to these three OEMs, Google could spend
23 \$80 million in Play revenue share to prevent losing \$1 billion
24 in Play revenue through OEMs using competing app stores; right?

25 A. Yes, and this is where I don't know if the 1 billion is

1 pre or postservice fee to developers.

2 Q. So it's either 1 billion -- so what you're trying to
3 communicate is that Google charges a 30 percent fee; right?

4 A. 30 or 15 percent, I believe, depending on the developer
5 size.

6 Q. Okay. So what you're saying is you don't know if it's
7 \$80 million to hedge \$300 million in Google's pocket or if it's
8 a billion dollars in Google's pocket? It's one of the two?

9 A. Yes.

10 Q. All right. Let's turn to Slide 7, please.

11 We talked earlier about how under the RSA 3.0, the OEMs
12 could enroll their devices in three different tiers or
13 categories; is that right?

14 A. Yes.

15 Q. And those tiers are on this slide here?

16 A. They are, yes.

17 Q. And the Google Forward on the right, that's the premier
18 tier as we've discussed?

19 A. That is correct.

20 Q. All right. And so as OEMs enroll their devices in higher
21 tiers and take on more obligations, the revenue share that
22 Google pays them increases?

23 A. That is correct.

24 Q. So this highest tier, this premier tier, Google Forward,
25 that's what we're looking at blown up on the screen; right?

1 A. Yes.

2 Q. And in order for the OEM to enroll a device in the premier
3 tier, they had to have enrolled that same device in the earlier
4 tiers as well?

5 A. That is correct.

6 Q. So the revenue share for the premier tier has these two
7 components. One is Search revenue share and the other is
8 Google Play revenue share; right?

9 A. Yes.

10 Q. And so for the Search revenue there's a number here that
11 says 12 percent Search; right?

12 A. Yes.

13 Q. And that's on top of the prior Search revenues from the
14 earlier tiers; right?

15 A. The core and the -- or the foundation tier, I believe so,
16 yes.

17 Q. Right. So overall for the premier tier, it's correct that
18 Google pays OEMs a total 20 percent Search revenue, right,
19 share?

20 A. After deducting for operating expenses, yes.

21 Q. Okay. Let's just pull that deck back down for a second
22 and let's look at this whole thing.

23 The optimized experience is 8 percent Search revenue
24 share; right?

25 A. Yes.

1 Q. And the Google Forward, the premier tier, is 12 percent
2 Search; right?

3 A. Yes.

4 Q. All right. So 8 plus 12 is 20?

5 A. Yes.

6 Q. Okay. And in addition to the Search revenue back into the
7 premier tier, Google pays a range of Google Play revenue share
8 to OEMs; right?

9 A. Yes.

10 Q. And that's that same numbers we were talking about
11 earlier: 16 percent for the Chinese, the big Chinese OEMs; and
12 4 to 8 percent revenue share for the smaller OEMs; right?

13 A. Yes.

14 Q. So for Oppo, Vivo, and Xiaomi -- and OnePlus is also in
15 this group even though it's not mentioned; right?

16 A. Yes.

17 Q. All right. So for those four, Google pays those OEMs
18 16 percent of the fees that Google collects from all of the
19 money spent on Google Play on those devices; right?

20 A. I believe so. I believe that's the math, yes.

21 Q. All right. And so part of the ability to get into the
22 premier tier is that OEMs have to agree not to preinstall any
23 other app store other than Google Play; right?

24 A. That is correct.

25 Q. So for these Chinese OEMs, they have to forego their

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1 alternative app stores that they already had, they'd already
2 developed, and only preinstall Google Play if they want to
3 collect that money; right?

4 **A.** If they want to collect the money, that's correct.

5 **Q.** So for smaller OEMs, as we discussed, it's 4 to 8 percent
6 of the overall fees that Google collects on those devices,
7 right, from Google Play?

8 **A.** Yes.

9 **Q.** All right. We can put that down.

10 So the premier tier requirements, that's a document that's
11 actually incorporated into Google's RSA 3.0 agreements; right?

12 **A.** I believe it might be a link to a document but, yes.

13 **Q.** All right. And that document includes the actual
14 requirements for the devices that are enrolled in the RSA 3.0
15 premier tier?

16 **A.** Yes.

17 **Q.** All right. Please turn to Exhibit 627 in your binder.

18 This is the premier tier requirements document; is that
19 correct?

20 **A.** It is.

21 **MS. MOSKOWITZ:** Your Honor, I move to admit
22 Exhibit 627 into evidence.

23 **MR. POMERANTZ:** No objection, Your Honor.

24 **THE COURT:** It's admitted.

25 (Trial Exhibit 627 received in evidence.)

1 **BY MS. MOSKOWITZ:**

2 **Q.** So this is the document that Google provides or shares
3 through a link, or whatever, with all OEMs that enroll their
4 devices in the premier tier; right?

5 **A.** That is correct.

6 **Q.** Okay. So this document contains the requirements for all
7 OEMs that they have to comply with for their premier tier
8 devices?

9 **A.** That is correct.

10 **Q.** So Section 3.7 on page 4 is titled "Application Preloads."
11 Do you see that?

12 **A.** I do.

13 **Q.** And "preloads" is another word for "preinstalls" or
14 "preinstallation"; right?

15 **A.** Yes.

16 **Q.** So this provision is describing the restrictions for an
17 OEM that wants to preinstall any non-Google app on a premier
18 tier device; right?

19 **A.** Yes.

20 **Q.** So there are several bullet points -- I'm not going to
21 walk through all of them; I'm just going to highlight them on
22 the screen -- that address app stores that compete with
23 Google Play; is that fair?

24 **A.** Yes.

25 **Q.** So this section and these highlighted terms prevent an OEM

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1 from preinstalling any app store other than Google Play?

2 **A.** That is correct.

3 **Q.** All right. Take that down.

4 Google has executed RSA 3.0 agreements with most of its
5 major Android OEM partners setting Samsung aside; right?

6 **A.** I believe so, yes.

7 **Q.** All right. So, for example, Google has entered into
8 RSA 3.0 agreements with Xiaomi, Vivo, Oppo, OnePlus, Sony,
9 Sharp, LG, Motorola, HMD, and TCL?

10 **A.** I believe that sounds about right, yes.

11 **Q.** So one of the OEMs I just listed, one of the Android OEMs,
12 is OnePlus; right?

13 **A.** Yes.

14 **Q.** And OnePlus is an OEM that sells smartphones, Android
15 smartphones, around the world?

16 **A.** Yes.

17 **Q.** Google and OnePlus entered into their RSA 3.0 agreement in
18 February of 2020; correct?

19 **A.** Yes, I believe so.

20 **Q.** All right. Please turn to Exhibit 626 in your binder,
21 please.

22 Exhibit 626 is a true and correct copy of the
23 February 2020 RSA agreement between Google and OnePlus?

24 **A.** It appears to be, yes.

25 **MS. MOSKOWITZ:** Your Honor, I move to admit 626 into

1 evidence.

2 **MR. POMERANTZ:** No objection, Your Honor.

3 **THE COURT:** It's admitted.

4 (Trial Exhibit 626 received in evidence.)

5 **BY MS. MOSKOWITZ:**

6 **Q.** All right. This one is a little bit messy to see, but
7 just looking on the front page you can see here that's the
8 February 1, 2020, and the title is the RSA?

9 **A.** Yes.

10 **Q.** And on the next page we have the parties, which is OnePlus
11 and Google. Do you see that?

12 **A.** I do.

13 **Q.** All right.

14 We can move to page ending 24 -- or page 24. I don't know
15 why I keep saying that.

16 It's also on the screen, sir.

17 This is the attachment that contains the revenue share
18 terms for OnePlus; is that right?

19 **A.** Yes.

20 **Q.** Okay. So under Section E of this, Google agreed to pay
21 OnePlus 20 percent, which amounts to the 16 percent net revenue
22 share on their premier tier devices; right?

23 **A.** Yes.

24 **Q.** There's some math that we have to do. You and I did that
25 together once upon a time, but it's the same as the 16 percent;

1 right?

2 **A.** That's correct, yes.

3 **Q.** Okay. And OnePlus did, in fact, enroll the vast majority
4 of its Android smartphones outside of China in the premier
5 tier; correct?

6 **A.** I think that they excepted India from inclusion, which is
7 a pretty big market, so I wouldn't necessarily say "vast
8 majority" without knowing the numbers.

9 **Q.** So if I were to say that it's over 95 percent of their
10 phones outside of China, you would disagree with that?

11 **A.** I don't know the precise number for India because it's a
12 pretty big market.

13 **Q.** Okay. So you just don't know one way or the other?

14 **A.** I don't know one way or another.

15 **Q.** Okay. Excluding India, would you agree that the vast
16 majority of OnePlus devices were subject to the premier tier?

17 **A.** I would believe so. I think that's right, yes.

18 **Q.** All right. So around March 2020 after this agreement was
19 entered into, you learned that OnePlus wanted to enter into a
20 partnership with Epic Games whereby it would have the Epic Game
21 Store app preloaded on OnePlus devices; right?

22 **A.** Yes.

23 **Q.** Now, because OnePlus was enrolling its devices in the
24 premier tier, OnePlus was not able to preload the Epic Game
25 Store app on those premier tier devices; right?

1 **A.** That is correct.

2 **Q.** And that is because the Epic Game Store app did, in fact,
3 have the ability to install other apps and, thus, competed with
4 Google Play; right?

5 **A.** That is correct, yes.

6 **Q.** So it ran afoul of those highlighted bullets we just
7 looked at in Section 3.7 of those premier tier requirements?

8 **A.** It did.

9 **Q.** All right. So in March of 2020, OnePlus approached Google
10 to seek permission to preinstall the Epic Games app -- the
11 Epic Game Store app on OnePlus devices; right?

12 **A.** While including in the premier tier, yes.

13 **Q.** And other than India, we just established that OnePlus was
14 enrolling nearly all of its devices -- the vast majority of its
15 devices in the premier tier; right?

16 **A.** Yes.

17 **Q.** So OnePlus needed to seek permission and, in fact,
18 approached Google to seek permission for an exception to the
19 requirements to allow it to preinstall the Epic Game Store app;
20 right?

21 **A.** To qualify for the premier tier, yes.

22 **Q.** It still wanted to be in the premier tier. It wanted an
23 exception to the requirements to install the Epic Game Store
24 app; correct?

25 **A.** Yes.

1 Q. All right. And it needed the permission in the form of a
2 waiver from Google to do that; right?

3 A. Yes.

4 Q. All right. Google talked OnePlus out of preinstalling
5 Epic Game Store app on its devices other than in India; right?

6 A. That's not how I would frame it.

7 Q. Well, OnePlus had been considering preloading Fortnite on
8 devices, but Google talked them out of it except in India;
9 right?

10 A. I wouldn't use that framing of talking them out of it.

11 Q. All right. You're aware that members of your team used
12 that exact language to report that that was precisely what
13 happened; right?

14 A. I believe that an Android premium working group used that
15 framing, but I don't know if members of my team actually did.

16 Q. Okay. The Android working group included folks on your
17 team?

18 A. I don't believe that it did, but I'm not 100 percent sure.

19 Q. All right. But you are aware that a team responsible for
20 OnePlus and these negotiations did, in fact, report that
21 OnePlus had also been considering preloading Fortnite on
22 devices, we talked them out of it except in India; right?

23 A. I think the team working on the premium working group
24 framed that as talking them out of it, but I don't think that
25 team was responsible for working with OnePlus.

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1 **Q.** Okay. And you were not involved in the waiver request
2 process; right?

3 **A.** I think I might have been exposed to some updates and
4 summaries, but I was not involved in the process itself.

5 **Q.** Right. It was run by others on your team?

6 **A.** That is correct.

7 **Q.** So they're the ones who would know what happened; right?

8 **A.** Yes. Yes.

9 **Q.** Okay. Let's look at your binder at Exhibit 629, and let's
10 look at that Android premium working group set of notes.

11 **MR. POMERANTZ:** Objection, Your Honor. Foundation as
12 to this document.

13 **THE COURT:** Okay. Why don't you lay a foundation,
14 please.

15 **MS. MOSKOWITZ:** Sure.

16 **BY MS. MOSKOWITZ:**

17 **Q.** So this is the Android premium working group that you were
18 just mentioning?

19 **A.** Yes.

20 **Q.** And what were they responsible for?

21 **A.** I think they were responsible for helping Android premium
22 share versus iPhone.

23 **Q.** And they discussed OnePlus and the suggested launch of the
24 Epic Game Store app in this document; right?

25 **A.** Yes.

1 Q. Okay. And this was a document that was created and
2 maintained in the ordinary course of business at Google?

3 A. I believe so, yes.

4 MS. MOSKOWITZ: Your Honor, I offer Exhibit 629 into
5 evidence.

6 MR. POMERANTZ: Objection, Your Honor. There's no
7 foundation here. The witness has not testified that he ever
8 saw this before his deposition or was involved in the creation
9 of it.

10 THE COURT: All right. Mr. Kolotouros, did you write
11 this document?

12 THE WITNESS: No, I did not, Your Honor.

13 THE COURT: All right. Do you know who wrote this
14 document?

15 THE WITNESS: I actually do not know who wrote it,
16 Your Honor.

17 THE COURT: Is this a document you relied on in the
18 scope of your job duties at Google?

19 THE WITNESS: It was not.

20 THE COURT: You did not rely on this document?

21 THE WITNESS: I did not.

22 THE COURT: Okay. Sustained.

23 BY MR. BORNSTEIN:

24 Q. So Google did not grant the waiver request to OnePlus;
25 correct?

1 A. We did not, that is correct.

2 Q. And because Google did not grant OnePlus' waiver request,
3 the only way that OnePlus could have preinstalled the Epic Game
4 Store app on its devices would have been to give up the
5 16 percent Google Play revenue share and the extra 12 percent
6 Google Search revenue share that it was getting in the premier
7 tier?

8 A. I believe that's what the terms specified, yes.

9 Q. So OnePlus decided, in fact, to take Google's revenue
10 share payments and keep nearly all of its devices outside of
11 India in the premier tier instead of preinstalling the
12 Epic Game Store app; correct?

13 A. I believe that was their decision, yes.

14 Q. All right. Let's talk about Samsung.

15 A. Okay.

16 Q. All right. Samsung has entered into a MADA with Google.
17 We looked at that earlier; right?

18 A. Yes.

19 Q. Samsung preinstalls the MADA apps, including Google Play,
20 on all of its Android smartphones outside of China; right?

21 A. That is correct, I believe, yes.

22 Q. And Samsung, at least as of early 2019, represented
23 26.2 percent of all Android activations outside of China;
24 right?

25 A. That sounds about right. I don't know the precise number,

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1 but it's a large percentage.

2 Q. Close enough?

3 A. Yes. It's a large number.

4 Q. Okay. Samsung devices, in fact, are responsible for half
5 or more of the revenue that Google receives for Google Play;
6 right?

7 A. Yes.

8 Q. You're familiar with the project we talked about earlier
9 called Project Banyan; right?

10 A. I am.

11 Q. And you became involved in Project Banyan in early 2019;
12 right?

13 A. That is correct.

14 Q. Okay. We're going to look at Exhibit 8523, which is
15 already in evidence. So we'll put that up on the screen. It
16 is also in your binder, sir.

17 A. Thank you.

18 Q. This is a document titled "Project Banyan" from
19 February of 2019; right?

20 A. Yes.

21 Q. And this is the document created by the working team for
22 Project Banyan at Google?

23 A. Yes.

24 Q. Let's turn to page 4, please.

25 This slide poses an existential question for Google Play;

1 right?

2 A. Yes.

3 Q. And an existential question in this context means a
4 question addressing Google Play's future existence; right?

5 A. I'm not sure if I'd correlate to that, but it's an
6 existential question that is posed on the slide, yes.

7 Q. Okay. But an existential question generally is something
8 that is going to the core of the future existence of this
9 thing; right?

10 A. Okay, yes.

11 Q. You agree?

12 A. Yeah.

13 Q. All right. So the existential question posed here is (as
14 read):

15 "How can we continue to keep Google Play as the
16 preeminent distribution platform for Android."

17 Right?

18 A. Yes.

19 Q. So the issue that Google was trying to solve through
20 Project Banyan was to ensure that Google Play could maintain
21 its position as the preeminent Android distribution platform;
22 right?

23 A. That's how the working group framed it, yes.

24 Q. That is exactly what they said here; right?

25 A. Yes.

1 Q. All right. So let's turn to Slide 8, please.

2 This deck addresses some Project Hug that we talked about
3 earlier and Project Banyan; right?

4 A. Yes.

5 Q. All right. Let's just look at this context row here. And
6 I won't focus on Project Hug because I understand you don't
7 know anything about it, but Project Banyan is over here on the
8 right and it gives the context for Project Banyan; right?

9 A. Yes.

10 Q. And this isn't talking about Apple; right? This is
11 talking about Android; right?

12 A. I believe so, yes.

13 Q. Now let's look at that first bullet under Project Banyan.
14 This is talking about Google Play facing competition for
15 distribution of apps from within other Android distribution
16 channels; right?

17 A. Yes.

18 Q. And the second bullet here says that some partners are
19 actually applying price pressure and experimenting with direct
20 distribution models on Android; right?

21 A. Yes.

22 Q. So, again, these bullets are what's going on within
23 Android; right?

24 A. Yes.

25 Q. The price pressure refers to pressure on Google's fee that

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1 it applies to purchases within apps downloaded from
2 Google Play; right?

3 A. I believe so, yes.

4 Q. And price pressure also refers to the idea that
5 competitive Android app stores might be charging or be willing
6 to charge less than Google Play charges; right?

7 A. I believe so, yes.

8 Q. Let's look at Slide 9, please.

9 This is talking about recent developments on the top. Do
10 you see that?

11 A. (Witness examines document.)

12 Q. It's also on the screen.

13 A. I'm sorry? Yes.

14 Q. Okay. The recent developments here are that certain
15 Android ecosystem participants are investing in game
16 distribution and exclusive content acquisition; right?

17 A. Yes.

18 Q. And the OEM listed up here is Samsung; right?

19 A. Yes.

20 Q. So in early 2019 Samsung ramped up its investments in its
21 Galaxy App Store; right?

22 A. I believe so, yes.

23 Q. And this slide, in fact, lists some ways that Samsung had
24 started ramping up since then; right?

25 A. It does.

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1 Q. So Samsung had started to charge 80 percent/20 percent
2 revenue share split for certain partners instead of 70/30;
3 right?

4 A. I believe so, yes.

5 Q. And Samsung was also aggressively pursuing exclusive deals
6 with certain developers to exclusively distribute their apps
7 through the Samsung Galaxy Store; right?

8 A. I believe so, yes.

9 Q. And, again, "exclusively" means that the apps that they
10 were courting from these developers would not be distributed
11 through the Google Play Store?

12 A. I believe so, yes. It was an exclusive, yes.

13 Q. Samsung also began putting the Galaxy Store on the home
14 screen of its devices; right?

15 A. Yes.

16 Q. And the Samsung Galaxy Store, to be clear, was a store
17 that could compete with Google Play; right?

18 A. Yes.

19 Q. Let's turn to Slide 10.

20 So the Project Banyan working team reported some
21 hypotheses in this slide. Do you see that?

22 A. I do.

23 Q. And it reported at the top here next to OEMs that Samsung
24 is the only OEM with sufficient share to plausibly build its
25 own store in key Play markets. Do you see that?

1 A. I do.

2 Q. And by "key Play markets," this is a reference to the fact
3 that Samsung has 71 percent share of premium Android devices;
4 right?

5 A. I believe so, yes.

6 Q. And premium, just to not confuse it with premier, that
7 just means like expensive, nice phones; right?

8 A. Yes.

9 Q. Okay.

10 A. That's fair to say, yes.

11 Q. All right. So let's turn to the next slide, page 11.
12 The hypotheses and assumptions continue here; right?

13 A. Yes.

14 Q. And this talks about users at the top. Do you see that?

15 A. Yes.

16 Q. So next to users, the slide identifies that users would
17 switch to a new Android distribution channel if there was a
18 strong draw of exclusive titles and/or a sustained pricing
19 advantage; right?

20 A. Yes.

21 Q. So the issue that's being presented here is that Samsung
22 could continue to pursue exclusive deals with major game
23 developers and offer a better price than Google Play; right?

24 A. That's how it's framed, yes.

25 Q. And if that happened, if they did that, users could

1 actually switch from Google Play to the Samsung Galaxy Store
2 and stay there?

3 **A.** I believe that's what this slide is saying, yes.

4 **Q.** All right. We can take that down.

5 So Google's Business Council approved Project Banyan;
6 right?

7 **A.** Yes.

8 **Q.** You weren't -- and you didn't recall actually being at the
9 meeting; right?

10 **A.** That's correct.

11 **Q.** All right. But you know they approved it?

12 **A.** Yes.

13 **Q.** Okay. And, in fact, in late April 2019, you and a team of
14 Google executives traveled to Korea and presented a proposal to
15 Samsung?

16 **A.** That is correct.

17 **Q.** And the team that went to Korea included senior Google
18 executives such as Hiroshi Lockheimer, Sameer Samat, and Jamie
19 Rosenberg?

20 **A.** That is correct.

21 **Q.** And Google offered at this meeting to pay Samsung
22 \$200 million over four years?

23 **A.** That is correct.

24 **Q.** And in exchange for that payment, Samsung's app store
25 would actually be subsumed within Google Play with Google Play

1 Billing, and there would just be a storefront within
2 Google Play that said "Samsung"; right?

3 **A.** There would be a Samsung storefront within Play, that is
4 correct.

5 **Q.** Right. But it would be Google Play infrastructure,
6 Google Play Billing. There would just be kind of like a tab or
7 a storefront facade that said "Samsung"?

8 **A.** Yeah. I don't know what the precise imagery would have
9 been within the store, but it would have been storefront within
10 the Play Store, that's correct.

11 **Q.** Okay. so they would not be operating an independent store;
12 right?

13 **A.** The offerings within the store would be independent, but
14 it would be within the Play Store infrastructure, that's
15 correct.

16 **Q.** And they would not be offering their own in-app payment
17 billing?

18 **A.** I believe that's correct, yes.

19 **Q.** So Google would keep all revenue from all in-app purchases
20 made through that storefront within Google Play?

21 **A.** Yes.

22 **Q.** Samsung was receptive to Google's proposal that Google pay
23 Samsung \$200 million in exchange for their agreement not to
24 have their own independent Samsung Galaxy Store; right?

25 **A.** Yes, I believe so.

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1 **Q.** And, in fact, Samsung sent a term sheet back to Google
2 with a counteroffer; right?

3 **A.** Yes.

4 **Q.** All right. Please turn to Exhibit 652 in your binder.

5 And this is the term sheet Samsung sent back to Google;
6 right?

7 **A.** Yes.

8 **MS. MOSKOWITZ:** Your Honor, I move to admit
9 Exhibit 652 into evidence.

10 **MR. POMERANTZ:** No objection, Your Honor.

11 **THE COURT:** It's admitted.

12 (Trial Exhibit 652 received in evidence.)

13 **BY MS. MOSKOWITZ:**

14 **Q.** All right. The top here says that this is a term sheet
15 and it's dated June 20th, 2019; right?

16 **A.** That is correct.

17 **Q.** All right. Now let's look at the first line of this term
18 sheet. It says "Structure." It says "Goal." Do you see that?

19 **A.** Yes.

20 **Q.** It says that the goal of the deal that Google proposed to
21 Samsung was to, quote, "prevent unnecessary competition on
22 Store"; right?

23 **A.** That was Samsung's framing, yes.

24 **Q.** So Samsung's interpretation of the goal of this
25 collaboration, this deal, was to prevent unnecessary

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1 competition with Google Play; right?

2 **A.** That was Samsung's framing, that is correct.

3 **Q.** So a few weeks after receiving this term sheet from
4 Samsung in June 20th, 2019, it's your testimony that Google
5 halted work on Project Banyan; is that right?

6 **A.** Yes.

7 **Q.** But Google did not halt work on reaching a deal with
8 Samsung; right?

9 **A.** We halted work on Banyan and then continued to have
10 conversations on how to make the store experience a better one
11 on Samsung phones, yes.

12 **Q.** Right. So plan B was to continue working with Samsung to
13 reach whatever deal you could reach with Samsung; right?

14 **A.** Yes.

15 **Q.** All right. Let's please turn -- well, before we go there,
16 sorry.

17 In 2020 Google, in fact, did enter into a number of deals
18 with Samsung; right?

19 **A.** That is correct.

20 **Q.** And those were a number of revenue share deals that Google
21 entered into with Samsung; right?

22 **A.** I think there were two revenue share deals and then a
23 separate commercial construct for go-to-market support.

24 **Q.** And you were involved in drafting the terms of these
25 agreements?

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1 **A.** I was.

2 **Q.** All right. Please turn your binder to Exhibit 1065,
3 please.

4 Oh, sorry. You're there?

5 **A.** I am.

6 **Q.** Okay. This is a document titled "Samsung 2020 Mobile
7 Incentive Agreements"; right?

8 **A.** Yes.

9 **MS. MOSKOWITZ:** Your Honor, I move to admit
10 Exhibit 1065 into evidence.

11 **MR. POMERANTZ:** No objection, Your Honor.

12 **THE COURT:** It's admitted.

13 (Trial Exhibit 1065 received in evidence.)

14 **BY MS. MOSKOWITZ:**

15 **Q.** All right. Let's put that on the screen.

16 The Google owner at the top is Jim K. and others. Do you
17 see that?

18 **A.** I do.

19 **Q.** Jim K. is you?

20 **A.** That's me.

21 **Q.** All right. And you and your team created this document to
22 brief senior Google executives about the deals Google was
23 negotiating with Samsung in late 2020?

24 **A.** That is correct, yes.

25 **Q.** And at the time that this was entered into, these deals,

1 Google estimated that it would pay Samsung approximately
2 \$8 billion over the four-year term of these agreements; right?

3 A. That is correct, I believe so.

4 Q. And there is a note at the bottom of the first page under
5 "Notable service omissions and adjustments from last Sundar
6 review." Do you see that?

7 A. I do.

8 Q. That's a reference to Mr. Pichai, the CEO?

9 A. (Witness examines document.) Okay. Yes. I'm sorry. I
10 was reading ahead a bit.

11 Q. That's fine.

12 That refers to the -- Mr. Pichai having last reviewed a
13 deal and changes that have been made since then?

14 A. That is correct, yes.

15 Q. Okay. And what this is communicating here is that Google
16 was no longer pursuing default home screen exclusivity for the
17 Play Store, but they were still going to get placement on the
18 default home screen for all devices under the MADA; right?

19 A. That is correct.

20 Q. And the next sentence says that "This saves us \$1 billion
21 over four years"; right?

22 A. Yes.

23 Q. And that's a reference to the revenue share that Google
24 would have had to pay if Samsung had entered into an RSA 3.0
25 premier tier agreement; right?

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1 A. There were different terms from RSA 3.0, but the rev --
2 that is correlated in the revenue share we would have offered
3 them, yes.

4 Q. So by avoiding paying revenue share for Google Play
5 exclusivity on Samsung devices, Google saved a billion dollars?

6 A. I don't believe that this deal ever asked for exclusivity
7 with respect to Play relative to the Samsung store.

8 Q. Well, it says here that it saved -- "By not asking for
9 exclusivity anymore, this saves us \$1 billion over four years."
10 Isn't that what it says?

11 A. Yes. So the exclusivity is specific to home screen versus
12 the actual store itself, that's correct.

13 Q. They get to install the Galaxy Store on their devices in
14 addition to Google Play; right?

15 A. Yes.

16 Q. And by allowing the Google Play Store and the Samsung
17 Galaxy Store both to be on that, Google did not have to pay an
18 additional \$1 billion of Google Play revenue share; correct?

19 A. The exclusivity for this offer was specific to default
20 home screen placement and not the actual preload of the Samsung
21 store itself.

22 Q. That's already required under the MADA, is it not?

23 A. Yes, it is.

24 Q. Okay. So they were just paying more money for something
25 they already got under the MADA?

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1 A. The thinking was to pay the revenue share on the
2 Play Store in connection with the Play Store being the only app
3 store on the default home screen inclusive of their app store.

4 Q. So they wanted home screen exclusivity?

5 A. By "they" meaning Samsung?

6 Q. No. Google.

7 A. Yes.

8 Q. Google wanted home screen exclusivity?

9 A. Relative to the Samsung store, that is correct.

10 Q. Okay. And they were willing to pay a billion dollars for
11 that?

12 A. We'd offered around that number, yes.

13 Q. And Google and Samsung, in fact, executed these deals
14 worth \$8 billion at the end of 2020?

15 A. We did, yes.

16 Q. And today the relationship between Google and Samsung is
17 extremely close; right?

18 A. I would say it's close, yes.

19 Q. All right. Let's put that away.

20 After 20 years of employment, Mr. Kolotouros, do you
21 consider yourself to be a loyal employee for Google?

22 A. I do.

23 Q. And as a loyal employee, you feel like you've worked to
24 protect Google; right?

25 A. In the work that I do on a day-to-day basis, yes, I think

1 that's correct.

2 Q. And you've received training called Communicate with Care,
3 have you not?

4 A. Yes.

5 Q. And as part of that training, you understand that Google
6 employees like yourself are warned that you need to be careful
7 about what you say in writing because your written
8 communications could appear in court; right?

9 A. I believe, yes.

10 Q. And during your time at Google, you've been sensitive to
11 how Google conducts its business and what might happen as a
12 result of various risks; right?

13 A. I think that's fair, yes.

14 Q. And in the ordinary course of business, you send instant
15 messages over Google Chat; right?

16 A. Yes, chats over Google Chat or Hangouts or whatever the
17 service is, yes.

18 Q. And you use Google Chat with your coworkers several times
19 a day; right?

20 A. Yes.

21 Q. And you knew that if history is off, chats would be
22 deleted every 24 hours; right?

23 A. That is correct.

24 Q. And you knew that a history off chats would be deleted
25 after 24 hours even if the participant in the conversation was

1 on a legal hold; right?

2 A. I believe so.

3 Q. And you were aware that you, yourself, was on a legal
4 hold; right?

5 A. Yes.

6 Q. And you know that being on a legal hold means that you
7 were legally required to preserve documents that might be
8 relevant to a case; right?

9 A. Yes.

10 Q. But you had your Google Chat set to history off for years
11 while on a legal hold; right?

12 A. That is correct.

13 Q. And when you testified in your deposition, you told me you
14 had had history off for as long as you had ever been using
15 Google Chat; right?

16 A. Yes.

17 Q. You cannot recall a single occasion when you actually
18 turned your chat history on; right?

19 A. That is correct.

20 Q. So you understand that because you did not ever turn your
21 history on during that entire period of time, all of your Chats
22 that you sent about any of the issues in this case were
23 permanently deleted; right?

24 A. I realize that I had history off and that chats would have
25 been deleted, yes.

1 Q. Chats were deleted; right?

2 A. I believe so, yes.

3 Q. All right. Do you agree that there are problems with
4 honesty and credibility among the senior leaders at Google?

5 A. No. I wouldn't frame it as that.

6 Q. Do you believe that there is a lack of honesty at Android
7 leadership?

8 A. No. I don't -- I wouldn't characterize it that way.

9 Q. Android leadership will lie to your face; right?

10 A. I don't know if I believe that to be true.

11 Q. You're aware that Jamie Rosenberg, your former boss, is
12 coming to testify here right after you?

13 A. I'm aware that he's in the courtroom, yes -- or in the
14 courthouse, yes.

15 Q. Okay. He's in the courthouse right now?

16 A. I believe so, yes.

17 Q. All right. You think Jamie Rosenberg is a liar; don't
18 you?

19 A. I do not, no.

20 Q. Okay. Let's take a look at your binder in Exhibit 6446
21 and see what you've written about that.

22 This is a set of notes that you've taken; right?

23 A. It's a set of very personal and private notes, yes, that I
24 didn't share or send to anyone, yes.

25 Q. Well, these are notes that you took down for a meeting

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1 that you were going to have with Don Harrison; right?

2 **A.** I believe it was in advance of a one-on-one. Generally
3 that's when I would put notes in this document.

4 **Q.** Okay. And you wrote these notes?

5 **A.** Yes.

6 **Q.** All right.

7 **MS. MOSKOWITZ:** Your Honor, I offer 6446 into
8 evidence.

9 **MR. POMERANTZ:** No objection, Your Honor.

10 **THE COURT:** It's admitted.

11 (Trial Exhibit 6446 received in evidence.)

12 **BY MS. MOSKOWITZ:**

13 **Q.** All right. We're going to walk our way through here.

14 Fair to say you were pretty unhappy when you wrote these
15 notes?

16 **A.** I think whenever I was inputting these notes, I was only
17 unhappy or frustrated or angry or jealous.

18 **Q.** All right. So halfway down the first page you refer to
19 the fact that you were going through some deposition prep. Do
20 you see that bullet that I'm at?

21 **A.** Yes.

22 **Q.** You say (as read):

23 "I've worked so hard to do good for Google and
24 protect Google."

25 Right?

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1 **A.** Yes.

2 **Q.** And you say (as read):

3 "I get treated so badly."

4 Right?

5 **A.** Yes.

6 **Q.** And you give some names of who's treating you so badly,
7 including Jamie Rosenberg and Andy Rubin?

8 **A.** Well, I never worked with Andy Rubin, so I'm not sure why
9 I would have included his name there.

10 **Q.** Okay. So let's talk about Jamie Rosenberg.

11 You've worked quite closely with him; right?

12 **A.** I have.

13 **Q.** He was your boss for a while?

14 **A.** He was.

15 **Q.** Okay. And he is the person you're referring to here as
16 treating you so badly; right?

17 **A.** That's what I write in this document, yes.

18 **Q.** And you say (as read):

19 "Why am I doing this? Why am I defending these
20 people?"

21 Right? You said that?

22 **A.** Yes.

23 **Q.** And on the bottom of page 1 you ask if Mr. Rosenberg is
24 going to be managing a new platforms and ecosystems leader. Do
25 you see where I am on the bottom there? It's not on the screen

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1 yet, but it's the last hashmark on that first page.

2 **A.** (Witness examines document.) Yes.

3 **Q.** And at the top of page 2 you continue and you say (as
4 read):

5 "The dishonesty is the issue, not the reporting
6 structure."

7 Right?

8 **A.** Yes.

9 **Q.** That's about Mr. Rosenberg again; right?

10 **A.** I don't know. I can't recall what I was referring to in
11 this particular reference.

12 **Q.** Well, this "just strategy thing when in every partner
13 meeting," that's a reference to Jamie Rosenberg; right?

14 **A.** I think that's fair, yes.

15 **Q.** Okay. So fair to say this bullet is about Jamie
16 Rosenberg?

17 **A.** I think that's right yeah.

18 **Q.** Okay.

19 **A.** Thank you.

20 **Q.** And Mr. Rosenberg lies; right? That's your view; no?

21 **A.** I don't have experience in my professional work with Jamie
22 or in my career management that he lied to me.

23 **Q.** All right. Let's look at the third bullet there (as
24 read):

25 "I never have one-on-ones with Jamie. I assume he

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1 wants me involved with nothing unless I ask or he is
2 caught, like Huawei, and then he lies about it."

3 Right?

4 **A.** Yes.

5 **Q.** And, again, you say "Very dishonest in 'just strategy...'"
6 "Very dishonest." That's about Mr. Rosenberg too; right?

7 That's a few lines down. Do you see that?

8 **A.** Yes.

9 **Q.** That's about Mr. Rosenberg; right? This "just strategy"
10 again?

11 **A.** Yes.

12 **Q.** All right. A few lines down you write (as read):

13 "There's a look at Don Leads."

14 Right? Do you see where I am?

15 **A.** I do.

16 **Q.** Now, if we go down, we need the bigger chunk of that,
17 about six hashes down under that it says (as read):

18 "Lack of honesty at Android leadership. Lie to your
19 face and stab you in the back."

20 Do you see that?

21 **A.** I do.

22 **Q.** All right. Let's turn to page 4, the last bullet in the
23 set of bullets that ends in the middle of the page says "Can't
24 contain hypocrisy." Do you see where I am?

25 **A.** Yes.

1 Q. You quote there -- or you wrote there -- excuse me -- (as
2 read):

3 "All our senior leaders morally bankrupt."

4 Do you see that?

5 A. I do.

6 MS. MOSKOWITZ: Pass the witness.

7 THE COURT: Okay. Before we do that, let's stand and
8 stretch for a moment. We've been sitting for a bit.

9 We'll break at about 11:00. Okay?

10 (Pause in proceedings.)

11 MR. POMERANTZ: May I proceed, Your Honor?

12 THE COURT: Yes, please.

13 MR. POMERANTZ: Thank you.

14 CROSS-EXAMINATION

15 BY MR. POMERANTZ:

16 Q. Mr. Kolotouros, Epic's lawyer just questioned you for over
17 an hour. Do you recall her ever mentioning the name "Apple"?

18 A. I do not.

19 Q. Does Android compete with Apple's IOS?

20 A. It does.

21 Q. You were asked a whole bunch of questions about RSA 3.0.
22 Did RSA 3.0 relate to Android's competition with Apple?

23 A. It did.

24 Q. How so?

25 A. The different tiers in the RSA, especially the premier

1 tier, was intended to allow phone makers to configure devices
2 or make devices a certain way that we believe were more likely
3 to compete successfully with the iPhone and pay them the
4 revenue share that goes with that set of features on a phone.

5 Q. You were also asked a lot of questions about something
6 called Project Banyan. Do you recall that?

7 A. I do.

8 Q. Did Project Banyan have anything to do with Android's
9 competition with Apple?

10 A. Yes.

11 Q. And in what way?

12 A. We were working with Samsung through Banyan and subsequent
13 efforts to see how we could create the best possible store
14 experience on Samsung phones, that was a very prominent
15 competitor to Apple, and so we were trying to essentially find
16 ways to work with them to get that best possible store
17 experience.

18 Q. All right. We'll come back to RSA 3.0 and Banyan in a few
19 minutes, but let's step back.

20 Is Android an operating system?

21 A. It is.

22 Q. And what is an operating system?

23 A. It basically is a -- the base layer for a device, or in
24 this case a smartphone, that handles system resources and
25 device configuration and how it works with apps -- navigates

1 how apps work.

2 Q. It's basically needed to make the phone run?

3 A. The base software layer on the phone that everything else
4 sits on top of, that's right.

5 Q. Who makes the Android operating system?

6 A. I believe the majority of the code is contributed by
7 Google.

8 Q. Is Android an open-source operating system?

9 A. It is open source, yes.

10 Q. What does it mean to be open source?

11 A. Open source means that it basically is open and available
12 for free to anyone who wants to distribute it and use it.

13 Q. And can anyone go onto the Internet, get the code, and
14 then modify it however they want?

15 A. Yes.

16 Q. Can another company go online, download Android, and then
17 use it to build a phone?

18 A. Yes.

19 Q. And can Android be used only to make phones or can it be
20 used for other types of things?

21 A. It can be used for any one of a number of different
22 devices, yes.

23 Q. Can you give examples of what else besides phones?

24 A. Tablets, TVs, cars. Even the Peloton uses Android.
25 In-flight entertainment screens use Android.

1 Q. Have you heard the term "OEM"?

2 A. Yes.

3 Q. And what does that mean?

4 A. It stands for original equipment manufacturer.

5 Q. And that's essentially the companies that make phones?

6 A. Yes.

7 Q. Okay. So to avoid more acronyms in this courtroom, maybe
8 we'll try to use the term "phone maker" --

9 A. Okay.

10 Q. -- rather than "OEM." I'll do my best.

11 How many phone makers are there out there right now that
12 are making phones using the Android operating system?

13 A. I think the number is measured in hundreds.

14 Q. Can you just name some of the ones that are more known?

15 A. Samsung, Sony, Sharp, Xiaomi, OnePlus, Motorola. Those
16 are the more prominent ones.

17 Q. And do any of those phone makers pay Google money to use
18 the Android operating system?

19 A. They do not.

20 Q. And is it your understanding that that's been the case
21 ever since it launched back in 2008?

22 A. That's my understanding.

23 Q. And if a phone maker decides that they want to use the
24 Android operating system, do they have to agree to do anything
25 for -- to pay Google in return?

1 **A.** No.

2 **Q.** Do anything to favor Google in return?

3 **A.** No.

4 **Q.** Does providing Android for free benefit both phone makers
5 and Google?

6 **A.** Yes.

7 **Q.** How does it benefit phone makers?

8 **A.** Well, it's a free operating system, which we believe to be
9 high caliber and has a -- is good enough to compete with the
10 iPhone.

11 **Q.** And how does giving Android away for free benefit Google?

12 **A.** It benefits Google in that it allows for an easy way or a
13 way for Google apps to get distributed on phones that are of
14 the highest quality.

15 **Q.** All right. So let me just clarify things.

16 We've often in this courtroom heard the term "app
17 developer." Is Google an app developer?

18 **A.** Google is an app developer, yes.

19 **Q.** And what are some of the apps that Google has developed?

20 **A.** The more common ones are Search, Chrome, Maps, YouTube,
21 Gmail, et cetera.

22 **Q.** And does distributing Android for free help Google as an
23 app developer?

24 **A.** Yes.

25 **Q.** And does it also help other app developers?

1 A. It does, yes.

2 Q. Does Apple make a competing operating system?

3 A. It does.

4 Q. And what is its operating system called?

5 A. IOS.

6 Q. Does offering Android for free help Google compete against
7 Apple?

8 A. It does.

9 Q. And how does it do that?

10 A. It allows for both Google to focus its innovation and
11 creativity on apps that we think work particularly well on
12 Android and allows smartphone makers to build the phones that
13 compete with Android -- with iPhone.

14 Q. All right. I want to put on the screen Exhibit 647. This
15 is the Android 101 presentation materials that you were -- that
16 you saw during your examination by Epic's counsel.

17 And if we could turn to page 7.

18 Now, you see a yellow star there and it says "Make it open
19 source and free." Do you see that?

20 A. Yes.

21 Q. So was making open -- Android open source and free part of
22 the original strategy for Android?

23 A. Yes.

24 Q. Starting back in 2008 or even earlier?

25 A. Yes.

1 Q. Does Android enable Android phone makers to innovate on
2 the phones that they create and manufacture?

3 A. Yes.

4 Q. What kinds of innovations have you seen from the phone
5 makers that make Android phones?

6 A. It can happen at the hardware or the software layer. So
7 from the hardware standpoint, Android was the first to do large
8 screen displays, edge-to-edge or infinite displays;
9 waterproofing; wireless charging. Also the first with 5G and
10 foldable phones.

11 And on the service side, they can customize the user
12 experience, the launcher, so to speak, so that it's a
13 customized experience on an OEM-by-OEM basis.

14 Q. When you say the first one to do those things, do you mean
15 that some Android phone maker did that before Apple did it with
16 the iPhone?

17 A. Yes.

18 Q. And was that part of the way that Android phone makers
19 compete against Apple and the iPhone?

20 A. Absolutely, yes.

21 Q. Who sets the prices for Android phones?

22 A. The phone makers themselves.

23 Q. And what is the range that you see of the prices for
24 Android phones?

25 A. They could be as cheap as 50 or \$60 going up to \$1800 or

1 so.

2 Q. And how does that price range compare to the prices that
3 Apple charges for the iPhone?

4 A. I believe the entry-level price for an iPhone, a new
5 iPhone, is around 400 or \$450.

6 Q. Okay. Let's turn to the issue of compatibility.

7 You were -- you had some questions posed to you on that
8 subject by Epic's counsel. Do you recall that?

9 A. Yes.

10 Q. And you're familiar with the term compatibility in the
11 context of Android?

12 A. I am.

13 Q. In simple terms, what does "compatibility" mean?

14 A. "Compatibility" means an app created by a developer will
15 work as intended and work well on a phone which is compatible.

16 Q. So suppose you had two phones. They're by -- made by
17 different phone makers and they're not compatible. What effect
18 would that have on an app developer?

19 A. The developer would have to write the app two different
20 ways to work on each of the phones.

21 Q. Okay. Now instead of two phone makers, let's assume
22 there's hundreds of phone makers. Okay?

23 A. Okay.

24 Q. And you said there's hundreds of phone makers out there
25 today making phones using the Android operating system;

1 correct?

2 A. Yes.

3 Q. If all of those phones were not compatible, what would
4 that mean to the app developer?

5 A. It means the developer -- it means the developer would
6 have to code -- excuse me -- the developer would have to write
7 the same app many different times to make sure it worked
8 properly on all the different phones that were in the market.

9 Q. And what do you think really would happen? What would app
10 developers do with faced with the burden and the cost of having
11 to make a different version of their app for 200 different
12 phone makers?

13 A. They would abandon Android.

14 Q. Now, does compatibility have a benefit for the users of
15 the Android phones.

16 A. Yes.

17 Q. And how does it benefit the users?

18 A. It ensures that the users when they're using an app that
19 the app is working as they expect and as intended by the
20 developer.

21 Q. All right. Can we put on the -- I'm sorry.

22 Could you take a look in your binder at Exhibit 5187?
23 It's the small binder that we handed to you.

24 A. Yes.

25 Q. And could you tell the jury what this document is?

1 **A.** This is the Android compatibility commitment between
2 Google and HTC, which is a phone maker.

3 **MR. POMERANTZ:** Your Honor, I would move to admit
4 Exhibit 5187.

5 **MS. MOSKOWITZ:** No objection.

6 **THE COURT:** It's admitted.

7 (Trial Exhibit 5187 received in evidence.)

8 **MR. POMERANTZ:** And if we could put that up on the
9 screen.

10 **BY MR. POMERANTZ:**

11 **Q.** Now, is the Android Compatibility Commitment also referred
12 to as the ACC?

13 **A.** Yes.

14 **Q.** And was HTC an Android phone maker?

15 **A.** It was or it might still be but, yes.

16 **Q.** And so HTC signed the compatibility commitment; correct?

17 **A.** They did.

18 **Q.** Now, is this agreement between Google and HTC similar to
19 the Android Compatibility Commitments that other Android phone
20 makers sign?

21 **A.** It is.

22 **Q.** And could you explain in simple terms what the phone maker
23 is agreeing to when it signs an Android Compatibility
24 Commitment?

25 **A.** It's agreeing to ensure that whenever it makes a phone or

1 another device like a tablet, that it will be compatible so
2 that apps that run on the phone are operating or working as
3 intended.

4 **Q.** All right. And that would enable an app developer, then,
5 to write just one version of the app that would work on all
6 compatible Android phones?

7 **A.** That's correct.

8 **Q.** Now I want to be clear. Does an Android phone maker have
9 to sign the Android Compatibility Commitment in order to use
10 the Android operating system?

11 **A.** No.

12 **Q.** Are there any Android phone makers that have not entered
13 into the Android Compatibility Commitment?

14 **A.** There's a tablet -- there's a tablet maker in Amazon but,
15 yes.

16 **Q.** All right. And I think you testified to this when you
17 were questioned by Epic's counsel. There's also something
18 called the Anti-Fragmentation Agreement; correct?

19 **A.** Right.

20 **Q.** And that's the predecessor to the Android Compatibility
21 Commitment?

22 **A.** That's correct.

23 **Q.** And they both essentially try to provide compatibility
24 across Android phones?

25 **A.** Yes.

1 Q. Now, does Apple have to worry about --

2 THE COURT: I'm sorry. The question was: Are there
3 any Android phone makers that have not entered into the
4 compatibility commitment? And you said there's a tablet maker.
5 Are there any phone makers?

6 THE WITNESS: I don't believe so.

7 THE COURT: Okay. The tablet is not a phone; right?

8 THE WITNESS: Right, but I just was calling out Amazon
9 as a --

10 THE COURT: As a phone maker?

11 THE WITNESS: Yes.

12 THE COURT: Okay. Go ahead.

13 BY MR. POMERANTZ:

14 Q. And that means since all of the Android phone makers have
15 signed these Android Compatibility Commitments, that the app
16 developer creates one version and it works on all of the
17 Android devices; right?

18 A. Yes.

19 Q. Does Apple have to worry about the compatibility of
20 iPhones?

21 A. No.

22 Q. Why not?

23 A. They don't open source or make available their operating
24 system, and they kind of control the ecosystem top to bottom.

25 Q. Is Apple's iPhone compatible with Android phones?

1 A. It is not.

2 Q. So if an app developer makes an app that works on an
3 iPhone, will that version of the app work on an Android phone?

4 A. It will not.

5 Q. Does the Android Compatibility Commitment relate in any
6 way to Android's ability to compete with Apple and its IOS
7 operating system?

8 A. It does.

9 Q. How does it relate to that competition?

10 A. If we cannot encourage developers to build for compatible
11 Android phones, it basically means that the developers won't
12 have any -- won't see the upside or benefit of being an Android
13 and will only be an iPhone.

14 Q. All right. Let's now move from the Android Compatibility
15 Commitment -- you can take that down, Phil -- to the MADA.

16 You remember questions being asked of you about the MADA?

17 A. Yes.

18 Q. And that's the Mobile Application Distribution Agreement?

19 A. Yes.

20 Q. All right. Let's put -- I'm sorry.

21 Could you look at Exhibit 5399 in your binder?

22 A. Okay.

23 Q. And that's the MADA agreement between Google and
24 Motorola Mobility; correct?

25 A. Yes.

1 **MR. POMERANTZ:** Your Honor, I move Exhibit 5399 into
2 evidence.

3 **MS. MOSKOWITZ:** No objection.

4 **THE COURT:** It is admitted.

5 (Trial Exhibit 5399 received in evidence.)

6 **BY MR. POMERANTZ:**

7 **Q.** Does this agreement apply to Motorola phones that are sold
8 in the United States?

9 **A.** It does, yes.

10 **Q.** And is this agreement with Motorola similar to Google's
11 other MADAs that it has with Android phone makers for phones
12 sold in the United States?

13 **A.** It is.

14 **Q.** Now, does the model license a core set of apps to a phone
15 maker through this MADA?

16 **A.** It does.

17 **Q.** Could we put Demonstrative 1 up on the screen?

18 Now, you see a bunch of apps and icons. You see that on
19 the screen?

20 **A.** I do.

21 **Q.** Does this slide show the core apps that are currently
22 licensed by the MADA?

23 **A.** It does.

24 **Q.** Could you identify each of the apps on the screen?

25 **A.** Yes. There's the Play Store, which is the store. There's

1 the Chrome Browser. There's Gmail, the Maps client. Meet,
2 which is a communication product. And then there's Photos,
3 which is just a photo gallery application. TV is the media and
4 entertain service. Drive is our cloud storage. YouTube Music
5 is a music app. And then there's YouTube and Search.

6 **Q.** Right. And we often use the term in this courtroom
7 "out-of-the-box experience." You've heard that term before;
8 correct?

9 **A.** I have.

10 **Q.** What does that mean?

11 **A.** It's the initial experience which a user is exposed to
12 when they take the phone out of the box, launch it, fire it up.

13 **Q.** And does Android strive to have a high-quality
14 out-of-the-box experience?

15 **A.** Yes.

16 **Q.** And how do you define what a high-quality out-of-the-box
17 experience is?

18 **A.** One that can fulfill the expectations of a user when they
19 begin using a smartphone, and hopefully one that provides
20 better service and better functionality than what can be
21 provided by an iPhone.

22 **Q.** And do you believe it's important for Android phones to
23 have a high-quality experience out of the box?

24 **A.** I do.

25 **Q.** Why?

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1 **A.** If users are trying an Android phone after having been on
2 an iPhone for some time, they might be trying it; but if they
3 don't like the experience out of the box or they don't see the
4 services or see features or functionality on that phone out of
5 the box, they're much more likely to go back to an iPhone in
6 my opinion.

7 **Q.** And if when a consumer buys an Android phone and takes it
8 out of the box and it's missing one of the core apps that they
9 expect to find on the phone, what do you expect that that
10 consumer's going to?

11 **A.** They might just go back to an iPhone.

12 **Q.** And if they find the apps on the phone, the core apps on
13 the phone, but they turn out not to be very good, what do you
14 think that consumer is going to do?

15 **A.** If the app experience for a user is worse on an Android
16 phone than an iPhone, they're more likely -- much more likely
17 to go back to an iPhone.

18 **Q.** All right. Can we put Demonstrative 2 up on the screen?

19 And can you explain to the jury what this demonstrative is
20 showing?

21 **A.** These -- the second set of icons listed were basically
22 iPhone apps that I believe are preloaded on iPhones. Apple
23 apps preloaded on iPhones.

24 **Q.** Do you believe it's important that Android phones have
25 preinstalled core apps that provide the same core

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1 functionalities that the iPhone provides?

2 **A.** I do.

3 **Q.** Why?

4 **A.** To the extent a user is switching from iPhone to Android
5 and they don't see a browser or a mail client or a photo
6 gallery, they're much more likely just to revert back to their
7 original iPhone.

8 **Q.** Now, the apps that we see on the screen here on the left
9 part, that is the Android apps, those are all Google apps;
10 right?

11 **A.** That is correct.

12 **Q.** And Google is the app developer of those apps?

13 **A.** Correct.

14 **Q.** Now, is the MADA one way that Google uses to promote its
15 apps?

16 **A.** Yes.

17 **Q.** And do Google's core apps being on Android phones help to
18 generate revenue for Google?

19 **A.** They do.

20 **Q.** And does that revenue help to pay for the Android
21 operating system?

22 **A.** It does.

23 **MS. MOSKOWITZ:** Objection. I'm trying not to object
24 to leading, but we're really --

25 **THE COURT:** Well, it's in interest of efficiency.

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1 Go ahead.

2 **BY MR. POMERANTZ:**

3 **Q.** Do Android phone makers pay anything to Google to
4 preinstall these core apps?

5 **A.** They don't.

6 **Q.** How does Google providing core apps for free help Android
7 phone makers with the cost of making a phone?

8 **A.** Well, it's just one less thing to worry about cost-wise
9 between the operating system and key services on their phone.

10 **Q.** Are there other costs that the phone maker incurs to put
11 out a good phone to compete with the iPhone?

12 **A.** Yes.

13 **Q.** What are those kinds of costs that the phone maker incurs
14 other than the Android operating system and these core apps
15 which it gets for free?

16 **A.** There's the hardware costs by themselves. There's also
17 providing security updates in connection with the phone so that
18 they can have -- they can be properly secured and private on an
19 ongoing basis.

20 **Q.** In your experience, do most phone makers want to
21 preinstall Google's core apps?

22 **A.** That is my understanding, yes.

23 **Q.** Now, if a phone maker wanted to put out an Android phone
24 without using these core apps, is it allowed to do so?

25 **A.** Yes.

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1 Q. And if a phone maker signs the MADA and preinstalls
2 Google's apps on the phone, can it also preinstall other apps
3 on its phone?

4 A. It can.

5 Q. And do phone makers actually do it, preinstall other apps
6 on the phone besides these 11 apps?

7 A. They do.

8 Q. And can you give some examples of the apps that you've
9 seen Android phone makers preinstall on their phones in
10 addition to these 11 apps?

11 A. They preinstall stores. They preinstall other cloud
12 services or media or phone -- or other services on the phone
13 like those provided by Microsoft or Amazon or Meta.

14 Q. Have you seen, for example, any phone makers that
15 preinstall Facebook on the app?

16 A. Yes.

17 Q. And have you seen them put Microsoft apps like Office or
18 LinkedIn preinstalled?

19 A. Yes.

20 Q. Does the MADA include any tools that help developers make
21 high-quality Android apps?

22 A. It does.

23 Q. And what are those tools?

24 A. Those are the GMS Core or Google Play Services APIs.

25 Q. Those are the APIs that you discussed with Epic's counsel

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1 before; correct?

2 **A.** That is correct.

3 **Q.** What does Google Play Services do for the developer?

4 **A.** It allows developers to make higher quality apps if they
5 elect to use some of the APIs made available to them through
6 Play Services.

7 **Q.** Do they have to use the Google Play APIs in order to make
8 an app that would work on an Android phone?

9 **A.** No.

10 **Q.** All right. Let's focus, if we can, on the Play Store,
11 which you see on the top of this demonstrative.

12 That's one of the apps that's part of the set that the
13 MADA licenses; correct?

14 **A.** Yes.

15 **Q.** And Play is an app store; correct?

16 **A.** Yes.

17 **Q.** Why does Google include the Play Store in the set of core
18 apps that it licenses under the MADA?

19 **A.** We think the Play Store is one of the most or an important
20 app that's part of a user's experience when they're unboxing a
21 phone.

22 **Q.** And so if a consumer bought an Android phone, took it out
23 of the box, and there wasn't an app store on it, what do you
24 think would happen?

25 **A.** I think they would return the phone if they didn't know

1 how to get apps on their phone.

2 **Q.** Is including a good app store as part of the core apps
3 important to the competition between Android and Apple?

4 **A.** Yes.

5 **Q.** And how is that?

6 **A.** If the store on a phone is not as good as or better than
7 what is offered on an iPhone, it's more likely for the user to
8 stay with Apple, with iPhone.

9 **Q.** Now, the MADA provides, like if you put play on the phone,
10 you have to put it on the home screen; correct?

11 **A.** That is correct.

12 **Q.** Why does Google ask for that?

13 **A.** It's part of the out-of-the-box experience. So that if a
14 user is launching their phone for the first time, they can
15 quickly see that there's a store available for them to download
16 apps if there are other apps that they want to download on
17 their phone.

18 **Q.** All right. Can we put Demonstrative 3 on the screen?

19 And could you explain to the jury what is shown on this
20 screen here?

21 **A.** This is the default home screen of a Samsung S23.

22 **Q.** Now, does Google benefit from having Play on the home
23 screen of a Samsung phone, for example?

24 **A.** It does.

25 **Q.** How does Google benefit?

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1 **A.** It benefits because being on the home screen makes the
2 user more likely to try the Play Store and, hopefully, like it
3 and use it thereafter.

4 **Q.** Now, in your experience, if a user tries an app that is
5 preloaded on the phone and they don't like it, what do they do?

6 **A.** They can either --

7 **MS. MOSKOWITZ:** Objection.

8 **THE COURT:** Lay a foundation, please.

9 **BY MR. POMERANTZ:**

10 **Q.** Mr. Kolotouros, part of your job is to work with Android
11 phone makers to try to make phones that are going to be
12 appealing to consumers; correct?

13 **A.** That is correct.

14 **Q.** And you spend time in your job trying to figure that out;
15 right?

16 **A.** Yes.

17 **Q.** And you work with your team?

18 **A.** Yes.

19 **Q.** And you also talk to the OEM -- or to the phone makers
20 about that; correct?

21 **A.** Correct.

22 **Q.** So based on your experience, if a consumer takes a
23 preloaded app, opens it up and tries it, and doesn't like it,
24 what will the consumer typically do?

25 **MS. MOSKOWITZ:** Same objection.

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1 **THE COURT:** Go ahead, but not too long, please.

2 **THE WITNESS:** They can either move the icon from
3 wherever it's present or they can delete the app.

4 **BY MR. POMERANTZ:**

5 **Q.** And, by the way, when you say "delete the app," Epic's
6 counsel asked you questions about deletable apps versus
7 nondeletable apps. Do you remember that?

8 **A.** Yes.

9 **Q.** So on the ones that are not deletable, why does Google ask
10 for those particular apps to be nondeletable?

11 **A.** In the event of a factory reset or the phone being handed
12 to someone else for use, a deletable app means that it won't be
13 available for use or preloaded on the factory reset phone, and
14 we think those six are particularly relevant for key use cases
15 for the phone.

16 **THE COURT:** Okay. We're going to take our morning
17 break and be back at 11:15.

18 **THE CLERK:** All rise.

19 (Proceedings were heard out of the presence of the jury:)

20 **THE COURT:** All right. You remain under oath. No
21 communications about your testimony of any sort, content,
22 style, presentation, or anything else.

23 **THE WITNESS:** Okay.

24 **THE CLERK:** You may be seated. Court's in recess.

25 (Recess taken at 10:57 a.m)

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1 (Proceedings resumed at 11:17 a.m)

2 (Proceedings were heard out of the presence of the jury:)

3 **THE COURT:** We're going to do the hearing on the chief
4 legal officer at 3:00 p.m. on Thursday, not 11:00 on Friday.
5 3:00 p.m. on Thursday.

6 You-all should prepare some exam questions, and I will
7 pick it up from there; and Google can do what it wants to do.

8 Okay. Let's bring the jury out.

9 (Proceedings were heard in the presence of the jury:)

10 **THE COURT:** Okay. Please.

11 **MR. POMERANTZ:** Thank you, Your Honor.

12 **BY MR. POMERANTZ:**

13 **Q.** Mr. Kolotouros, we were looking at this demonstrative
14 that's on the screen with the Samsung phones home screen.

15 If a user doesn't want Play on the home screen, takes the
16 phone out of the box, doesn't want Play on the home screen, can
17 the user move the phone -- the Play Store someplace else on the
18 device?

19 **A.** They can, yes.

20 **Q.** And does the MADA prohibit a phone maker from
21 preinstalling another app store on the phone?

22 **A.** No.

23 **Q.** And does the MADA prohibit the phone maker from
24 preinstalling another app store on the home screen of the
25 phone?

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1 A. No.

2 Q. And, in fact, that's what Samsung does; correct?

3 A. That is correct.

4 Q. If we can put Demonstrative 4 on the screen.

5 This is the same phone only we're now pulling out two of
6 the icons on the screen. Can you explain to the jury what this
7 shows?

8 A. It shows the Galaxy Store sitting side by side next to the
9 Play Store.

10 Q. About how many Samsung Galaxy phones are out there in the
11 United States?

12 A. I believe it's measured in tens of millions.

13 Q. Does virtually every one of them have the Samsung
14 Galaxy Store right next to the Play Store on the home screen of
15 the phone as soon as you take it out of the box?

16 A. I believe so, yes.

17 Q. Do you know about how many Apple iPhones there are in
18 the United States?

19 A. I think there's at least one hundred million, plus or
20 minus, but I'm not a hundred percent sure.

21 Q. And does the iPhone come with an app store on the phone?

22 A. It does.

23 Q. And what's that store called?

24 A. The App Store.

25 Q. And how many iPhones come with more than one app store

1 on the iPhone?

2 **A.** None.

3 **Q.** And does Apple allow the user to put another app store on
4 the phone?

5 **A.** It does not.

6 **Q.** So let's look at this comparison between Apple and
7 Android.

8 Does Android enable many different phone makers to make
9 and sell Android phones?

10 **A.** It does.

11 **Q.** Does Apple do so?

12 **A.** No.

13 **Q.** Does Android enable many phone makers to innovate on the
14 features of a phone?

15 **A.** Yes.

16 **Q.** Does Apple do so?

17 **A.** No.

18 **Q.** Does Android enable many phone makers to set their own
19 prices for their own phones?

20 **A.** Yes.

21 **Q.** And does Apple enable that?

22 **A.** No.

23 **Q.** Does Android enable phone makers to put an app store other
24 than Play on their phone?

25 **A.** Yes.

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1 Q. Does Apple allow that?

2 A. No.

3 Q. Does Android enable phone makers to put an app store other
4 than Play on the home screen of the phone?

5 A. Yes.

6 Q. Does Apple allow that?

7 A. No.

8 Q. Does Android enable a user to sideload another app store
9 onto an Android phone?

10 A. It does.

11 Q. Does Apple allow that?

12 A. I don't believe so.

13 Q. All right. Let's turn now to another subject, which is
14 revenue share agreements or RSAs.

15 Are you familiar with some of the ways in which Apple
16 publicly criticizes Android phones to potential customers
17 because of security issues?

18 A. Yes.

19 Q. What are some of the public criticisms that you've heard
20 Apple make?

21 A. I believe I've heard executives reference Android as a
22 toxic hellstew, and I also think they market iPhones as
23 particularly secure and/or private.

24 Q. Now, do Google's revenue sharing agreements say anything
25 about trying to improve the security of Android phones?

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1 **A.** Yes.

2 **Q.** Okay. So let's take a look at one of those. Take a look
3 in your binder at Exhibit 626.

4 What is this document?

5 **A.** This is the Revenue Share Agreement with -- I'm sorry --
6 OnePlus.

7 **Q.** All right.

8 **MR. POMERANTZ:** And if this agreement is not yet
9 already in evidence, I would move it into evidence?

10 **THE CLERK:** It's been admitted.

11 **THE COURT:** I think it is. Isn't it in?

12 **MS. MOSKOWITZ:** Yes.

13 **THE COURT:** All right. Go ahead.

14 **MR. POMERANTZ:** Thank you.

15 **BY MR. POMERANTZ:**

16 **Q.** Is this agreement similar to Google's other revenue
17 sharing agreements with other Android phone makers?

18 **A.** It is.

19 **Q.** Can you turn to page 13 of this agreement?

20 **A.** Okay.

21 **Q.** And do you see Section 7.1? The heading says "Letter
22 Upgrade Obligations." Do you see that?

23 **A.** I do.

24 **Q.** What are letter upgrades?

25 **A.** Letter upgrades are essentially when a phone is updated to

1 include the newest version of Android, which is released every
2 year.

3 **Q.** Why does Google release a new version of Android every
4 year?

5 **A.** So that Android can continue to innovate and also compete
6 successfully with the iPhone.

7 **Q.** Does Apple release a new version of IOS every year?

8 **A.** I believe so, yes.

9 **Q.** And are these new releases part of the competition that
10 goes on between Apple and Android?

11 **A.** Yes.

12 **Q.** Now, if a phone maker signs a Revenue Share Agreement,
13 what is the phone maker's obligation with respect to letter
14 upgrades?

15 **A.** In this particular version of the agreement, they must
16 update the phone for a period of 24 months whenever new letter
17 updates are available -- new versions of Android are available.

18 **Q.** Why is it that Google wants the phone maker to upgrade the
19 phones with the new version of Android?

20 **A.** iPhones will receive letter updates quite quickly every
21 year; and if users are getting exposed to new innovations via
22 the iPhone and somebody on an Android device is not getting
23 access to new innovations on Android, it means the user's more
24 likely to want an iPhone to get access to those innovations
25 year over year.

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1 Q. And so Section 7.1 -- does -- let me start over.

2 Does Section 7.1 provide that if the phone maker wants a
3 share of revenue, then they have to update through letter
4 upgrades?

5 A. Yes.

6 Q. And look at Section 7.2. 7.2 refers to security update
7 obligations. Is that something different than a letter update?

8 A. It is.

9 Q. What is a security update?

10 A. A security update represents a security patch for the
11 phone to essentially close whatever vulnerabilities might exist
12 on the phone, and it can happen on a periodic basis to make
13 sure the phone from a security standpoint has been updated.

14 Q. And so if a phone maker wants to share in revenue, what is
15 its obligation with respect to security updates?

16 A. I think in this particular case, it's 36 months of
17 bimonthly updates.

18 Q. All right. In your experience, are phones that don't get
19 letter upgrades or security updates competitive with iPhones?

20 A. In my experience, no.

21 Q. Why?

22 A. Because they're not able to -- one, they're not as able --
23 they won't be as secure or as private because they're not
24 getting the letter -- the security updates and they're also not
25 getting access to the innovations that are released with each

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1 new version of Android which is available on the iPhones
2 rather consistently.

3 **Q.** Now, for a phone maker to update the phone for security
4 reasons, does that cost the phone maker money?

5 **A.** There is cost associated with it, yes.

6 **Q.** And does the revenue sharing agreement relate to those
7 increase costs that are placed on the phone maker?

8 **A.** It does, yes.

9 **Q.** In what way?

10 **A.** The revenue share can be used to offset the incremental
11 cost associated with either the letter update or the security
12 updates in connection with the phone.

13 **Q.** All right. Now, one of the exhibits that you were shown
14 by Epic's counsel is Exhibit 623.

15 Could we bring Exhibit 623 up and go to the second page to
16 the paragraph near the end that begins with "In my opinion"?

17 This was the paragraph that you were asked about. What
18 counsel did not ask you about is that it says a couple of
19 issues, and she asked you about the second one. I want to ask
20 you about the first.

21 What do you understand it means to have less consumer
22 experience fragmentation?

23 **A.** It means that to the extent that users are getting a bad
24 experience on their phone, it's important to work with OEMs to
25 try to minimize that bad experience via the fragmentation.

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1 Q. And is that part of what the revenue sharing agreements
2 were designed to address?

3 A. Yes.

4 Q. All right. You can take that down.

5 All right. Let's talk about RSA 3.0 in particular, and I
6 think counsel showed you Exhibit 624. So let's look at
7 Exhibit 624.

8 This is a slide deck, and one of the slides that counsel
9 showed you was page 5. So if we could turn to page 5 and if
10 you could see that.

11 Do you see that near the bottom of this chart there are
12 two logos that are the Apple logos?

13 A. Yes.

14 Q. Did RSA 3.0 have anything to do with how Android competes
15 with Apple?

16 A. It does.

17 Q. Can you explain that to the jury?

18 A. So the first bullet in terms of cohesive set of services
19 for messaging, photos, et cetera, is just essentially a way of
20 ensuring that via the RSA 3.0 the device has -- is configured
21 in a way that can more successfully compete via the services
22 available.

23 And also the second bullet speaks to where Android was
24 losing substantial share compared to -- Android was losing
25 substantial share compared to iPhone.

1 **THE COURT:** You need to slow down.

2 **THE WITNESS:** Oh, I'm sorry.

3 **THE COURT:** We have a court reporter here. So just
4 slow down a little bit. Go ahead.

5 **THE WITNESS:** I'm sorry.

6 So the second bullet just speaks to how Android's share
7 was under pressure in the United States relative to iPhone.

8 **BY MR. POMERANTZ:**

9 **Q.** By "under pressure" you mean that more people were buying
10 iPhones than Android phones?

11 **A.** We were losing Android users to iPhone, that is correct.

12 **Q.** And is -- did you look into that?

13 **A.** Yes. Yes.

14 **Q.** And what was the cause of that shift in market share?

15 **A.** It could be worse experience on the phones. It could be
16 no security updates, no letter updates, or worse experience.
17 So we tried to correct that via aligning incentives with the
18 phone makers and the RSA deals.

19 **Q.** Did you see evidence that some people were switching from
20 the Android phone to an iPhone?

21 **A.** Yes.

22 **Q.** All right. You can take this down.

23 I want to make sure we're clear about RSA 3.0.

24 Counsel referred you to something called the premier tier;
25 correct?

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1 A. Yes.

2 Q. And the premier tier said that Play -- if you decide to
3 put a particular device into the premier tier, then Play can be
4 the only store preloaded on the phone; correct?

5 A. That is correct.

6 Q. Does that stop a phone user from sideloading another app
7 store onto the phone if that's what they wanted to do?

8 A. It does not, no.

9 Q. And is there anything that would prevent a user from
10 sideloading another app store and putting it right on the home
11 screen?

12 A. No.

13 Q. Is there anything that would prevent the user from taking
14 the Play Store and moving it to some other place on the device?

15 A. No.

16 Q. And if a phone maker wants to take part in RSA 3.0, can
17 they decide to put a certain phone into the premier tier and
18 another phone not into the tier?

19 A. Yes.

20 Q. Could they decide to have phones sold in Oregon in the
21 tier but phones sold in California not in the tier?

22 A. That is correct, yes.

23 Q. Now let's talk about how many phones in the United States
24 actually are part of this RSA 3.0 premier tier.

25 Do you know approximately what percentage of phones in the

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1 United States -- Android phones in the United States are in the
2 premier tier?

3 A. I believe it is less than 5 percent.

4 Q. Less than 5 percent?

5 A. Less than 5 percent, yes.

6 Q. So does that mean that more than 95 percent of the phones
7 in the United States are not part of the premier tier?

8 A. Yes.

9 Q. And all of those phones are fully free to preload another
10 app store if that's what they want to do?

11 A. That is correct, yes.

12 Q. All right. Let's talk about Project Banyan.

13 First, counsel asked you about something called the Banyan
14 working group; correct?

15 A. Yes.

16 Q. Were you a member of the Banyan working group?

17 A. I was not.

18 Q. But you had some involvement in Project Banyan; correct?

19 A. I did.

20 Q. Counsel showed you a document that had something called an
21 existential question. Do you remember that?

22 A. I do.

23 Q. So as you were working on Project Banyan, what was the
24 question that was most important to you?

25 A. How do we help Samsung compete more successfully with

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1 Apple and iPhone?

2 Q. And how, in your view, did Project Banyan -- how would it
3 have helped Samsung to do a better job of competing against
4 the iPhone?

5 A. It would have financed their ability to do custom deals
6 with developers for exclusives on their phone, and it also
7 would have allowed users to have the out-of-box experience with
8 a single store on the home screen so that they knew that there
9 was a good source for applications that included within it the
10 Samsung storefront.

11 Q. All right. Now, counsel showed you a term sheet that had
12 the phrase -- I think it had the phrase "unnecessary
13 competition" on it. Do you recall that?

14 A. I do.

15 Q. And that was a term sheet that came from Samsung; correct?

16 A. That is correct.

17 Q. All right. Let me show you another document.

18 Can we put Exhibit 606 on the -- 6066 -- I'm sorry. Not
19 on the screen.

20 First, can you take a look at that?

21 A. (Witness examines document.) Yes.

22 Q. Could you tell the jury what this document is?

23 A. This is the e-mail from Jamie Rosenberg to members who
24 were working on the Project Banyan effort that we would not be
25 proceeding with further work on the project.

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1 **MR. POMERANTZ:** Your Honor, I move Exhibit 6066 into
2 evidence.

3 **MS. MOSKOWITZ:** No objection.

4 **THE COURT:** It's admitted.

5 (Trial Exhibit 6066 received in evidence.)

6 **MR. POMERANTZ:** Can you put this and -- can you bring
7 up the first paragraph please, Mr. Nicols?

8 **BY MR. POMERANTZ:**

9 **Q.** All right. So this e-mail is dated July 12th of 2019. Do
10 you see that?

11 **A.** I do.

12 **Q.** And that's about two or three weeks after you received
13 that term sheet from Samsung; correct?

14 **A.** That is correct.

15 **Q.** And what is Mr. Rosenberg telling you and others in this
16 e-mail?

17 **A.** That we're essentially stopping work on the Project Banyan
18 effort.

19 **Q.** And did that, in fact, end the work that was going on with
20 Project Banyan?

21 **A.** It did.

22 **Q.** It ended; correct?

23 **A.** Correct.

24 **Q.** Project Banyan never happened; correct?

25 **A.** It never happened, correct.

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1 Q. Now, since Google stopped working on Project Banyan, did
2 Google and Samsung ever reach an agreement that said that
3 Samsung couldn't preinstall the Galaxy Store on a Samsung
4 phone?

5 A. No.

6 Q. Did Google and Samsung ever reach an agreement that said
7 that Samsung couldn't put the Galaxy phone [sic] on the home
8 screen of Samsung phones?

9 A. No.

10 Q. And, in fact, before Banyan and after Banyan, Samsung
11 phones have had the Galaxy Store on the home screen right next
12 to the Play Store; correct?

13 A. I believe that is the case, yes.

14 Q. Since you started working with Samsung in 2014, has there
15 ever been an agreement with Samsung about what service fee the
16 Galaxy Store can charge app developers?

17 A. Not that I've been part of.

18 Q. And so far as you know, there is no agreement; correct?

19 A. Correct.

20 Q. In fact, counsel for Epic showed you that at times Samsung
21 has chosen to charge a different service fee than Play charges;
22 correct?

23 A. That is correct.

24 Q. All right. There were some questions asked of you about
25 OnePlus and waivers it was requesting so that it could put the

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1 Epic Game Store on the phone and still remain in the premier
2 tier. Do you recall that?

3 **A.** I do.

4 **Q.** All right. So let's look at Exhibit 628.

5 Could you look at that in your binder?

6 **A.** Okay.

7 **Q.** Do you have that in front of you?

8 **A.** I do.

9 **Q.** Could you tell the jury what this is?

10 **A.** This is a summary prepared by my team in Taiwan detailing
11 the context of what the request was and the discussion was
12 along with updates on status.

13 **MR. POMERANTZ:** All right. I move Exhibit 628 into
14 evidence.

15 **MR. BORNSTEIN:** No objection.

16 **THE COURT:** It's admitted.

17 (Trial Exhibit 628 received in evidence.)

18 **MR. POMERANTZ:** All right. If we could put the first
19 page up on the screen and put the top up there, in particular
20 the first two bullets.

21 Okay. And just bring up the first two bullets, please, if
22 you could, up at the top where it says "Updates."

23 **BY MR. POMERANTZ:**

24 **Q.** Now, this is from something called the APAC HW Partnership
25 BD. Do you see that?

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1 A. I do.

2 Q. What is that?

3 A. That is my team that is based mostly in Asia.

4 Q. And so your team was the one that was responsible for
5 interacting with OnePlus on this particular request from
6 OnePlus?

7 A. Yes.

8 Q. And you see under "Updates" there's -- the second bullet
9 has a March 27th date and the first one has an April 6th date.
10 Do you see that?

11 A. I do.

12 Q. So could you explain to the jury what OnePlus was
13 requesting on March 27th?

14 A. In this -- in the March 27th request, they were requesting
15 that the devices remain in the premier tier despite -- or also
16 in connection with the Fortnite preload.

17 Q. All right. So let's go to the second page and look at the
18 options that Google was considering in response to this
19 request. And in particular, can we look at Option 1a?

20 You can see what it says in Option 1a, and it says OnePlus
21 asks Epic for the waiver, and it says (as read):

22 "Google will discuss if we could grant an RSA waiver
23 to Epic Fortnite installer."

24 Do you see that?

25 A. I do.

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1 Q. And is that your understanding of the position that Google
2 told OnePlus it would do; that is, it would discuss with them
3 the request?

4 A. Yes.

5 Q. All right. And then let's go back now to the first slide
6 and see what happens on the next date on April 6th.

7 Go back up to the top there.

8 And so on April 6th we see where it says (as read):

9 "OnePlus decided not to pursue the waiver request."

10 Do you see that?

11 A. I do.

12 Q. What is your recollection of what happened?

13 A. My recollection is what is reflected here, which is that
14 the options were laid out for OnePlus via my team and they had
15 conversations, and OnePlus then elected to maintain their India
16 devices in the one tier below and their other devices in the
17 premier tier.

18 Q. All right. We can take that down.

19 Let's go now to Chats.

20 Do you recall that Epic's counsel asked you some questions
21 about Chats? Correct?

22 A. Yes.

23 Q. Now, after this lawsuit was filed, were you told about
24 your responsibility to preserve Chats?

25 A. I was.

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1 Q. And what were you told?

2 A. That not to discuss matters related to the case over Chat
3 and if I did discuss it, to turn history on.

4 Q. And did you comply with that instruction?

5 A. I believe that I did, yes.

6 Q. All right. Now, you understand that the obligation to
7 preserve chats for this lawsuit started when the lawsuit was
8 filed in August of 2020; correct?

9 A. Yes.

10 Q. So let's focus on the time period after August of 2020
11 when this preservation obligation existed. Okay?

12 A. Okay.

13 Q. Do you recall having any discussions over Chat related to
14 this lawsuit after August of 2020?

15 A. I do not, no.

16 Q. When did you stop working on Project Banyan?

17 A. I believe it was in August or July of 2019. So one year
18 before.

19 Q. And to the best of your recollection, did you ever use
20 Google Chat to discuss Project Banyan after August of 2020?

21 A. I did not, no.

22 Q. Now, has Google made any significant changes to the MADA
23 after August of 2020?

24 A. It has not.

25 Q. To the best of your recollection, did you use Google Chat

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1 to discuss Google's strategy for the MADA after August of 2020?

2 A. I did not.

3 Q. Now, when Google -- when was Google negotiating the RSA
4 3.0 agreements with Android phone makers? At least when were
5 you involved in that?

6 A. It would have been the end of 2019 and the beginning of
7 2020.

8 Q. So to the best of your recollection, did you use
9 Google Chat to discuss Google's negotiations for RSA 3.0 after
10 August of 2020?

11 A. No.

12 Q. Counsel showed you some personal notes that you've
13 taken --

14 A. Yes.

15 Q. -- correct?

16 Why did you write those notes?

17 A. Those were notes that I only input when I was feeling
18 angry or frustrated or jealous or some other reason, but it was
19 specific to when I just wanted to deposit angry thoughts and
20 then walk away from it.

21 Q. And did you from time to time feel kind of angry or
22 frustrated or jealous because of things that were happening at
23 work?

24 A. Sure.

25 MS. MOSKOWITZ: Objection.

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1 **THE COURT:** Overruled.

2 Go ahead.

3 **BY MR. POMERANTZ:**

4 **Q.** Why did you write these things down?

5 **A.** If I had to choose between saying these things outright to
6 the people that were involved or bottling it up or just
7 depositing it in a document and walking away, I preferred to
8 basically put the angry thoughts in a document and walk away
9 from it.

10 **Q.** Did you ever intend for your personal notes to become
11 public in this way?

12 **A.** I did not.

13 **Q.** Did you ever intend for the people who you were writing
14 about to see these notes?

15 **A.** No.

16 **Q.** Do you believe that many of the statements in your notes
17 are not true?

18 **MS. MOSKOWITZ:** Objection.

19 **THE COURT:** Sustained.

20 You can ask -- ask a different question, please.

21 **BY MR. POMERANTZ:**

22 **Q.** Do you believe that Mr. Rosenberg is dishonest?

23 **A.** No.

24 **Q.** Do you believe that Mr. Rosenberg is an honest man?

25 **A.** I do.

KOLOTOUROS - CROSS / POMERANTZ

1 Q. Why do you believe that?

2 A. We've had only honest conversations when discussing my
3 career and discussing business matters when I was working for
4 him and thereafter.

5 Q. So why did you write down that he was dishonest in these
6 notes if you believe he's an honest man?

7 A. I think I would have been experiencing just some anger or
8 frustration in connection with something that I might have seen
9 or experienced and was projecting my anger and frustration on
10 him unnecessarily.

11 Q. All right. So let's now come back. I have one more issue
12 to go over with you and that's, again, coming back to Samsung.

13 You recall that you have an agreement with Samsung that
14 you entered into around 2020?

15 A. Yes.

16 Q. And that's -- that deal was summarized on Exhibit 1065;
17 correct?

18 A. That is correct.

19 Q. And you remember that exhibit had Deals 1, 2, and 3 on it?
20 Do you remember that?

21 A. Yes.

22 Q. So at a fundamental level, what is Google's revenue
23 sharing agreement with Samsung intended to achieve?

24 A. It's intended to invest in their business and their
25 ability to be successful in the marketplace and in particular

KOLOTOUROS - REDIRECT / MOSKOWITZ

1 relative to iPhone.

2 **Q.** All right. And let's talk about Deal 3 in particular on
3 that -- of the three deals that were part of the overall
4 Samsung relationship.

5 What was Deal 3 about?

6 **A.** Deal 3 is intended to be a go-to-market fund, which is
7 intended to motivate iPhone users to try Samsung phones and
8 switch from iPhone to Samsung phones.

9 **Q.** And how did you try to incentivize Samsung to get iPhone
10 users to switch from iPhone to a Samsung phone?

11 **A.** Through marketing activities, which we supported, to
12 encourage the switching and the trying; and through also
13 working with Samsung through product improvement plans to make
14 their devices better, more secure, more updated with letter
15 updates.

16 So it was all about helping users who were switching from
17 iPhone to Samsung have that first experience be a great one,
18 one that was better than iPhone.

19 **MR. POMERANTZ:** No further questions, Your Honor.

20 **THE COURT:** Okay. Any brief recross.

21 **MS. MOSKOWITZ:** Yes, Your Honor.

22 May I proceed? Thank you.

23 **REDIRECT EXAMINATION**

24 **BY MS. MOSKOWITZ:**

25 **Q.** I'm going to jump around a bit, so hopefully you can stay

1 with me.

2 **A.** Okay.

3 **Q.** Your counsel showed you a demonstrative with a bunch of
4 Google apps side by side with Apple apps. Do you remember
5 that?

6 **A.** I do.

7 **MS. MOSKOWITZ:** If we have it, can we put it on the
8 screen?

9 **TECH PERSONNEL:** We don't have it.

10 **MS. MOSKOWITZ:** We don't have it.

11 All right. Well, you -- maybe someone can help us out.

12 **MR. POMERANTZ:** I can put it on the screen. Do you
13 want me to put it on the screen?

14 **MS. MOSKOWITZ:** That would be wonderful. Thank you so
15 much.

16 **MR. POMERANTZ:** Sure. No problem.

17 **BY MS. MOSKOWITZ:**

18 **Q.** All right. So as that's coming up, and let's look at the
19 one that has the Apple apps next to it, these are -- you were
20 talking about -- when your counsel was asking you questions,
21 about how Google needs to have all these apps because Apple's
22 got all these apps. Is that the gist?

23 **A.** As part of the out-of-box experience, that is correct.

24 **Q.** Right. And so you understand, though, that in each of
25 these categories of apps, there are lots of competitive apps

KOLOTOUROS - REDIRECT / MOSKOWITZ

1 out there; right?

2 **A.** I believe so, yes.

3 **Q.** Right. Like there are lots of other app stores that could
4 potentially compete with Google Play; right? We talked about
5 that earlier?

6 **A.** I believe so, yes.

7 **Q.** Amazon App Store is one of them?

8 **A.** Sure.

9 **Q.** The Epic Game Store is one of them?

10 **A.** Uh-huh, yes.

11 **Q.** The OEM app stores are examples?

12 **A.** Correct.

13 **Q.** All right. So that's true for Browsers too and Mail and
14 Voice, Facechat; right?

15 **A.** Yes.

16 **Q.** There are competitive apps out there?

17 **A.** There are.

18 **Q.** All right. So OEMs, though, cannot preinstall any app
19 that competes with any of these under the RSA premier tier;
20 right?

21 **A.** I don't think it's all the apps listed here in the premier
22 tier based on the document that I was looking at, but some set
23 of them, yes.

24 **Q.** Yeah. They can't even preinstall an app that competes
25 with, say, Gmail; right?

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1 **A.** I think that's true, but I don't have the line-for-line.

2 **Q.** Let's look at 627. You can take a look. That's the
3 premier tier requirements.

4 And while -- it's okay. Let's just let him look at it.
5 Let's just keep this on the screen.

6 So while you're looking for that, the premier tier
7 requirement in addition to the 11 Google apps that are required
8 to be preinstalled, there's like another 10 or so that are also
9 required to be preloaded by OEMs under the premier tier?

10 **A.** That is correct.

11 **Q.** All right. And so in addition to app stores, the OEMs
12 under the premier tier cannot install apps that compete with
13 several aspects and features or functionality of other
14 Google Play apps; right?

15 **A.** Google Play apps or --

16 **Q.** Sorry. Google apps.

17 **A.** Yeah. Some subset of the 11, right, that's correct.

18 **Q.** Right. And it's in there?

19 **A.** Yes.

20 **Q.** Like what?

21 **A.** I don't think there's any restrictions on --

22 **Q.** Not which ones there aren't restrictions on. What are
23 their restrictions for not being able to install any apps that
24 compete with any of the aspects of Google's services? There's
25 a list there; right?

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1 A. Yes.

2 Q. All right. What is it?

3 A. It's Chrome Browser. It's Google Contacts Duo, Gboard,
4 Gmail, the Google Assistant, Google Calendar, Google Discover,
5 Google Lens, Google News, Google One, Google Pay, Google
6 Photos, Google Play, Google Podcasts, and Google Search,
7 Messages, and the Dialer, the phone dialer.

8 Q. All right. So the list you just read, if an OEM installs
9 a device in the premier tier, they cannot preinstall any app
10 that competes with any of those Google apps you just read?

11 A. In the premier tier, that's correct.

12 Q. Okay. You said that most phone makers, I think you said,
13 want to install the core Google apps. Is that -- did I
14 understand your testimony right?

15 A. Yes.

16 Q. But we talked about when I was questioning you that
17 Samsung and Motorola, some of your most significant OEM
18 partners, in fact, approached you to request that they not be
19 forced to install certain of those apps; right?

20 A. Yes.

21 Q. In fact, they specifically told you that they were unhappy
22 with some of those apps and specifically decided, wanted, not
23 to install them; right?

24 A. That is correct.

25 Q. But Google said, no, you must install even those apps;

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1 right?

2 A. That is correct.

3 Q. You were asked about a bunch of questions where Google
4 lets this but Apple doesn't. Do you remember those questions?

5 A. I do.

6 Q. Like competing app stores, for example?

7 A. Yes.

8 Q. But there is no OEM for Apple to even allow those things.
9 There are no other OEMs other than Apple, right, for IOS?

10 A. Apple doesn't license their properties, that is correct.

11 Q. Right. Apple doesn't even pretend to be open; right?

12 A. They don't pretend to be open, I believe that's correct.

13 Q. All right. You were asked a bunch of questions about the
14 MADA not prohibiting other app stores from being preinstalled
15 in the home screen or anywhere else; right?

16 A. Yes.

17 Q. But we did establish, and I just want to make sure we're
18 on the same page, for all devices in the premier tier of the
19 RSA, that is restricted; right?

20 A. Yes.

21 Q. Now, you were asked a few questions about -- well, let's
22 just start here.

23 I think one of the first questions your counsel asked you
24 is whether I asked you a single question about Apple. Do you
25 remember that?

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1 **A.** Yes.

2 **Q.** And you said I didn't?

3 **A.** I don't -- I don't recall having heard one about Apple.

4 **Q.** Okay. Well, you remembered that existential question
5 deck; right?

6 **A.** Yes.

7 **Q.** And your counsel just asked you about it again?

8 **A.** Yes.

9 **Q.** You don't remember me asking about whether Apple was in
10 there?

11 **A.** I don't. I'm sorry, I don't recall the precise question.

12 **Q.** Okay. So you don't recall me asking you: And this isn't
13 talking about Apple; right? This is talking about Android;
14 right? And you saying "I believe so, yes." You don't remember
15 that question and answer?

16 **A.** Not off the top of my head, no.

17 **Q.** All right. Let's pull it up, 8253. We'll do it together
18 now. This is in evidence.

19 We'll start with Slide 4 just to refresh us.

20 This is the existential question; right? Do you remember
21 that?

22 **A.** Yes.

23 **Q.** Okay. Let's go to Slide 8. This is the one I asked you
24 about earlier. And let's look at this context.

25 Remember I was asking you about the context for

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1 Project Banyan? Do you see that?

2 A. Yes.

3 Q. Apple is not mentioned there, is it?

4 A. It is not.

5 Q. It's not mentioned anywhere on that slide; is it?

6 A. That is correct.

7 Q. All right. Let's go to 9. This is another slide we
8 looked at earlier. Do you remember that?

9 A. Yes.

10 Q. This is about the Android ecosystem partners and what they
11 are doing; right?

12 A. Yes.

13 Q. And Apple is not mentioned on this slide; right?

14 A. I don't believe so.

15 Q. Okay. And, please, sir, I want you to take your time. So
16 if you don't -- if you need to look at it, I want you to.

17 Apple is nowhere mentioned on that slide; correct?

18 A. I don't believe so.

19 Q. All right. Slide 10.

20 We looked at this one too, right, earlier?

21 A. Yes.

22 Q. Apple's not mentioned anywhere on this slide; right?

23 A. (Witness examines document.) So whenever -- whenever I
24 see something --

25 Q. Sir --

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1 A. Yes.

2 Q. -- is Apple mentioned on this slide?

3 A. No, I do not see Apple mentioned.

4 Q. All right. How about the next one?

5 A. (Witness examines document.) I do not.

6 Q. That's a no?

7 A. That's a no.

8 Q. All right. And we're not going to do it here, but can you
9 tell me that if you sat and looked at every single slide in
10 that deck, that you would find Apple anywhere in there? Do you
11 have any reason to think you would?

12 A. I have not looked at every single slide in the deck.

13 Q. Okay. RSA 3.0, you talked about some percentages of
14 phones.

15 Just to be clear, when you entered into these RSA 3.0
16 deals, the exclusivity requirements that they were signing up
17 to for the premier tier only applied to new phones shipping
18 going forward; right?

19 A. That is correct.

20 Q. So all of the phones out there in the entire world that
21 were shipped before RSA 3.0 were not subject to the exclusivity
22 or premier tier requirements; right?

23 A. That is correct.

24 Q. All right. And so the percentages you were giving did not
25 apply to new devices shipping out going forward from today, for

KOLOTOUROS - REDIRECT / MOSKOWITZ

1 example?

2 **A.** I believe I was referring to the base of devices in the
3 United States.

4 **Q.** Okay. And you, I think, were asked if there was anything
5 that would prevent users from sideloading app stores to the
6 home screen; is that right?

7 **A.** Yes.

8 **Q.** You're aware that there are a number of steps that Google
9 imposes for users to actually successfully download, sideload
10 an app store onto their device?

11 **A.** I know there are steps to sideloading, yes.

12 **Q.** Right. You know there are many steps to sideloading;
13 right?

14 **A.** There's several steps. I don't know the exact number.

15 **Q.** Okay. You were asked about OnePlus; right?

16 **A.** Yes.

17 **Q.** And you were asked about whether Google sort of gave them
18 some options and that they chose to not go forward with the
19 Epic Game Store preinstall; is that your testimony?

20 **A.** Yes.

21 **Q.** All right. But they asked and Google said no to the
22 waiver; right? You testified about that earlier, did you not?

23 **A.** Yes.

24 **Q.** Okay. So Google said, "No, you may not still have premier
25 tier and still go ahead with the Epic Game Store preinstall";

1 right?

2 A. That is correct.

3 Q. Right. So OnePlus gave up -- well, withdrawn.

4 You never offered OnePlus the ability to keep 12 percent
5 additional Search revenue and 16 percent Google Play share,
6 revenue share, and still go forward with the Epic Game Store
7 launch; right?

8 A. That is correct.

9 Q. Okay. So they had to give that up, all of that money, if
10 they wanted to preinstall the Epic Game Store; right?

11 A. That is correct.

12 Q. You were asked about revenue share offsetting costs for
13 security updates. Do I remember that testimony about right?

14 A. Yes.

15 Q. Well, rev share also offsets any money they may have made
16 on distributing apps through their own app store; right?

17 A. That is correct.

18 Q. So they -- Google could have gotten through contractual
19 provisions the security upgrades it needed without requiring
20 Google Play exclusivity; right?

21 A. It could have been an added requirement, yes.

22 Q. You were shown 624, so why don't we pull that back up.

23 You were shown Slide 5 of this. Do you remember that on
24 your counsel's questioning?

25 A. I do.

KOLOTOUROS - REDIRECT / MOSKOWITZ

1 Q. And you pointed out a couple Apple logos down there?

2 A. Yes.

3 Q. But to be clear, the Google Play row of this, row two, has
4 nothing to do with Apple; right? There is no mention of Apple
5 either in logo or name; correct?

6 A. That is correct.

7 Q. You can put that down.

8 You were asked about your Chats a bit.

9 A. Yes.

10 Q. What's this lawsuit about?

11 A. I believe this lawsuit is about Android practices and its
12 contractual frameworks.

13 Q. Okay. And so is it your sworn testimony that in the
14 three years since August of -- almost three years -- since
15 August 13th, 2020, that you have sent zero chats about any of
16 those issues?

17 A. I typically take those to e-mail or --

18 Q. Sir, that was not my question.

19 Is it your sworn testimony to this jury that you not once
20 ever sent a single chat about any of those issues in the two
21 and a half years since August 13th, 2020?

22 A. I can't recall any.

23 Q. So the answer is yes or no? Can you swear that you never
24 did or can you just not tell us one way or the other?

25 A. I cannot guarantee that I never did.

KOLOTOUROS - REDIRECT / MOSKOWITZ

1 Q. Right. And so if you did, your history was off that whole
2 time; right?

3 A. Yes.

4 Q. And so we have no way of knowing. Those are deleted
5 forever; right?

6 A. Yes.

7 Q. And you were asked about those notes, Exhibit 6446; is
8 that right?

9 A. Yes.

10 Q. Those were created in May 2019; correct?

11 A. Yes.

12 Q. And you continued to work on those and update those all
13 the way through mid-July 2020; right?

14 A. I don't know the exact date I stopped entering those notes
15 in, yes.

16 Q. Okay. But it went on for over a year?

17 A. Plus or minus, yes.

18 Q. Okay. And you didn't sort of after you cooled off go back
19 and sort of delete any of the things that you thought were mean
20 or --

21 A. No. I basically would write them down, and there's no
22 edit history, so I wouldn't go back and review them and then
23 delete if I felt that they were inaccurate.

24 Q. And you were asked if you intended those notes to be
25 produced in litigation?

KOLOTOUROS - REDIRECT / MOSKOWITZ

1 A. Yes.

2 Q. And your -- well, I guess you understood, though, that
3 your Google documents were going to be produced in litigation
4 if we had a litigation?

5 A. Yes.

6 Q. All right. So the only way to ensure those notes weren't
7 retained were to put them in an off-the-record chat; right?

8 A. Well, those were personal notes.

9 Q. Sir --

10 A. I didn't chat with anybody on those topics.

11 Q. Right. Well, you could have put them in a chat to
12 yourself; right? They would have disappeared after 24 hours;
13 right?

14 A. A chat to myself?

15 Q. Yeah.

16 A. I don't know if it's possible to chat to myself in the
17 service.

18 Q. Okay. You just don't know one way or the other?

19 A. I never tried it.

20 Q. Okay. You were asked about -- well, let's just talk about
21 those notes for one more moment, and then I think we can move
22 on.

23 I think you were asked if Mr. Rosenberg you think is
24 honest?

25 A. Yes.

JURY QUESTIONS

1 **Q.** But you acknowledge that not one, not two, but multiple
2 times did you say in those notes that he was, in fact,
3 dishonest; right?

4 **A.** I believe so. That's what you showed me, yes.

5 **Q.** Yeah. And it wasn't just Mr. Rosenberg; right? You
6 referred to Android leadership lying to your face; right?

7 **A.** I believe in the notes, yes.

8 **Q.** And in the notes you referred to Android leadership being
9 morally bankrupt; right?

10 **A.** Somebody I referred, yeah, to being morally bankrupt, I
11 believe so, yes.

12 **Q.** Yeah. You said that in there; right?

13 **A.** Yeah.

14 **MS. MOSKOWITZ:** No further questions, Your Honor.

15 **THE COURT:** I occasionally forget, but any questions
16 for this -- ah, okay.

17 Lisa, can you get that? Thank you.

18 (Pause in proceedings.)

19 **THE COURT:** All right. Okay. Three questions.
20 Here's one I will give for -- this is Question Number 2 now;
21 right, Ms. Clark?

22 **THE CLERK:** Yes.

23 **THE COURT:** Can I write that on here?

24 **THE CLERK:** Yes.

25 **THE COURT:** All right. For Android devices -- this is

JURY QUESTIONS

1 for you.

2 **THE WITNESS:** Okay.

3 **THE COURT:** For Android devices, in terms of total
4 revenue, what percentage is enrolled in the RSA premier tier?

5 **THE WITNESS:** For total revenue of Android devices in
6 the premier tier?

7 **THE COURT:** That's the question.

8 **THE WITNESS:** I do not know what the revenue that
9 flows through those devices is.

10 **THE COURT:** Are you able to give an estimate that's
11 not a guess, but an estimate?

12 **THE WITNESS:** It's definitely less than 50 percent
13 because I know that Samsung represents between 50 and
14 60 percent.

15 **THE COURT:** Okay.

16 All right. Here's Question Number 3, which I will give:
17 What percentage of new Android phones are subject to RSA
18 premier tier? New Android phones.

19 **THE WITNESS:** I think it's -- I don't know the precise
20 number.

21 **THE COURT:** Just whatever your best recollection is
22 that's not a guess.

23 **THE WITNESS:** I think it's less than 25 percent.

24 **THE COURT:** Of new Android phones?

25 **THE WITNESS:** Of new Android phones. I'm excluding

1 all Samsung phones and other manufacturers that don't have
2 RSA 3.0 enrollment options.

3 **THE COURT:** Well, I think the question is just
4 thinking of the universe of new Android phones, how many of
5 those are subject to the RSA premier tier?

6 **THE WITNESS:** I would say less than 25 percent.

7 **THE COURT:** Okay. Let's see...

8 All right. This will be Question Number 4, which I will
9 give: Are there any restrictions for an OEM to move their
10 devices up or down the RSA tiers or opt out of the tier system
11 if they wish?

12 **THE WITNESS:** The second question, they can opt out of
13 the tier system altogether if they wish. It's a
14 device-by-device choice for the optimize tier and the premier
15 tier.

16 And when a device has been enrolled, it's hard to ladder
17 up or down in terms of putting it in one versus the other -- so
18 moving from optimize to premier or from premier down to
19 optimize -- because it's configured at the time the device is
20 actually approved and then with a certain tracking ID.

21 **THE COURT:** Okay. Great. Thanks very much.

22 That's it?

23 Okay. You may step down.

24 (Witness excused.)

25 **THE COURT:** And we will take our lunch break. See you

PROCEEDINGS

1 back at about 12:35.

2 **THE CLERK:** All rise.

3 (Proceedings were heard out of the presence of the jury:)

4 **THE COURT:** Okay. Be careful on your way down. You
5 can leave. It's lunchtime.

6 **MS. MOSKOWITZ:** Thank you.

7 **THE COURT:** Careful on the way down.

8 **THE WITNESS:** Thank you, Your Honor.

9 (Luncheon recess was taken at 12:02 p.m.)

10 **AFTERNOON SESSION**

12:40 p.m.

11 (Proceedings were heard out of the presence of the jury:)

12 **THE COURT:** Okay. Let's bring out the jury, please.

13 (Proceedings were heard in the presence of the jury:)

14 **THE COURT:** Who's next?

15 **MR. EVEN:** Your Honor, Epic calls Jamie Rosenberg.

16 **THE COURT:** All right.

17 **THE CLERK:** Will you please raise your right hand?

18 **JAMIE ROSENBERG,**

19 called as a witness for the Plaintiff, having been duly sworn,
20 testified as follows:

21 **THE WITNESS:** I do.

22 **THE CLERK:** Thank you. Please be seated.

23 **MR. EVEN:** May I proceed, Your Honor?

24 **THE CLERK:** Please state your full name for the Court
25 and spell your last name.

ROSENBERG - DIRECT / EVEN

1 **THE WITNESS:** Jamie Rosenberg, J-A-M-I-E,
2 R-O-S-E-N-B-E-R-G.

3 **THE CLERK:** Thank you.

4 **MR. EVEN:** May I proceed, Your Honor?

5 **DIRECT EXAMINATION**

6 **BY MR. EVEN:**

7 **Q.** Good afternoon, Mr. Rosenberg. My name is Yonatan Even.
8 I represent Epic Games.

9 You have a binder that I placed before you. Do you have
10 it?

11 **A.** Yes.

12 **Q.** Thank you.

13 You joined Google in 2011; correct?

14 **A.** 2010.

15 **Q.** 2010.

16 And from 2010 to 2016, you had responsibilities related to
17 the building of the Google Play Store; right?

18 **A.** Yes.

19 **Q.** And from 2016 to 2019, you had strategy responsibilities
20 across both Android and Google Play; correct?

21 **A.** Yes.

22 **Q.** And at that time Ms. Kochikar reported to you; right?

23 **A.** Yes.

24 **Q.** And Mr. Kolotouros reported to you; right?

25 **A.** Yes, from 2016 to 2019.

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1 Q. And in May 2020 you became vice president of strategy and
2 operations for platform and ecosystems at Google; correct?

3 A. Yes.

4 Q. And by 2022, you've been a -- you have been a part-time
5 adviser at Google; correct?

6 A. Yes.

7 Q. You advise Google on current Google Play Store policies?

8 A. No.

9 Q. You advise Google on current Android policies?

10 A. No.

11 Q. You advise Google on anything other than ongoing
12 litigation?

13 A. I'm sorry. I didn't understand that question.

14 Q. Do you advise Google on anything other than coming here
15 testifying, et cetera?

16 A. Yes. I work -- I work with a number of leaders across the
17 company on leadership development and coaching.

18 Q. Okay. Google requires developers to use Google Play
19 Billing for in-app purchases of digital content in
20 Play-distributed apps; correct?

21 A. Yes.

22 Q. Now, historically Google exempted developers who sold
23 digital content for use outside of the app from the requirement
24 to use Google Play Billing; correct?

25 A. Yes, there was that language in our policy.

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1 Q. So let's take a look at the language. If you turn in your
2 binder at Exhibit 8029.

3 A. (Witness examines document.)

4 Q. Do you have it?

5 A. Yes.

6 Q. And this is the Google Play developer program policies
7 from June 2014?

8 A. Yes, I see that.

9 MR. EVEN: Your Honor, I move to admit Exhibit 8029.

10 MR. KRAVIS: No objection.

11 THE COURT: Okay. 8029 is admitted.

12 (Trial Exhibit 8029 received in evidence.)

13 BY MR. EVEN:

14 Q. If you can turn to page 4, Mr. Rosenberg, and you see that
15 there's a second bullet down under in-app purchases that says
16 (as read):

17 "Developers offering additional content services or
18 functionality within another category of app downloaded
19 from Google Play must use Google Play's in-app billing
20 services as the method of payment except..."

21 Right?

22 A. Yes, I see that.

23 Q. And if you go to the exceptions, the second exception, you
24 see that that says (as read):

25 "Where payment is not for digital content or goods

1 that may be consumed outside of the app itself; e.g.,
2 buying songs that can be played on other music players."

3 Correct?

4 **A.** I believe it says "where payment is for digital content or
5 goods."

6 **Q.** "Where payment is for digital content or goods," that's
7 the exception; correct?

8 **A.** Yes.

9 **Q.** And you can close out that document.

10 That exception, in addition to songs, applied, for
11 instance, to Amazon's Kindle bookstore; correct?

12 **A.** Yes, as I recall.

13 **Q.** And Amazon used to sell Kindle e-books through the Android
14 app; correct?

15 **A.** Yes, I believe so.

16 **Q.** And the user could take the Kindle book and read it on the
17 Android app or read it on a reader outside; correct?

18 **A.** Yes.

19 **Q.** And Amazon, therefore, did not have to use Google Play
20 Billing for its Kindle bookstore; correct?

21 **A.** Yes.

22 **Q.** And if Amazon chose a different payment solution, it paid
23 Google nothing; correct?

24 **A.** Correct.

25 **Q.** Now, in addition to Kindle, at various times there were

1 newspaper apps on the store that were not on Google Play

2 Billing; correct?

3 A. Yes, I believe so.

4 Q. And there were certain video and video streaming apps on
5 the store that did not use Google Play Billing; correct?

6 A. Yes.

7 Q. And there were certain music apps on the store that did
8 not use Google Play Billing; correct?

9 A. Yes.

10 Q. For example, Netflix did not use Google Play Billing at
11 various times?

12 A. Yes, at various times.

13 Q. And Hulu did not use Google Play Billing?

14 A. Yes, at the time.

15 Q. Now, Google tried to persuade apps that fell within the
16 exemption for content consumed outside the app to use
17 Google Play Billing; correct?

18 A. Yes, we did have conversations with those developers about
19 using Google Play Billing.

20 Q. And, for example, while the exemption was still in place,
21 Google offered to pay the *Wall Street Journal* to integrate
22 Google Play Billing; correct?

23 A. Yes, I think we offered some promotional consideration.

24 Q. Well, let's take a look at that. If you can turn to
25 Exhibit 801 in your binder.

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1 **A.** (Witness examines document.)

2 **Q.** Do you have it?

3 **A.** Yes.

4 **Q.** And this is an e-mail exchange that you had with
5 Ms. Kochikar and others back in August of 2013 with the subject
6 "Please read WSJ details"; correct?

7 **A.** Yes, I see that.

8 **MR. EVEN:** Your Honor, I move to Exhibit 801 into
9 evidence.

10 **MR. KRAVIS:** No objection.

11 **THE COURT:** 801 is admitted.

12 (Trial Exhibit 801 received in evidence.)

13 **MR. EVEN:** Thank you.

14 **BY MR. EVEN:**

15 **Q.** If you can turn to page 3 of the exhibit.

16 All the way at the bottom you see there's an e-mail from
17 somebody named Serge Kassardjian, and -- I'm hoping I'm not
18 butchering that name -- to you with the subject "Signature
19 Needed: Wall Street Journal Agreement"; right?

20 **A.** Yes.

21 **Q.** And Mr. Kassardjian writes (as read):

22 "Jamie.

23 "We recently came to agreement with Wall Street
24 Journal to redesign their app to integrate 1) our
25 subscription billing services with 30 percent rev share."

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1 Do you see that?

2 A. Yes, I see that.

3 Q. And if you turn to the last page of this document, you see
4 there's a line up there where Mr. Kassardjian says "essentially
5 asking to execute the agreement"; correct?

6 A. Yes, I see that.

7 Q. Rather than execute this agreement on August 21, 2013, at
8 9:00 a.m. -- and now go to page 3, there's an e-mail there from
9 you -- you forward this e-mail from Mr. Kassardjian to
10 Ms. Kochikar and wrote (as read):

11 "We shouldn't be putting stuff like this in writing."

12 Correct?

13 A. I see that's the first part of the sentence, yes.

14 Q. Then you write that you are -- further in the e-mail, that
15 you are happy to get on the phone with anyone at *Wall Street*
16 *Journal* and confirm we're committed to it; right?

17 A. I see that it says that, yes.

18 Q. Okay. If you turn to page 2 of Exhibit 801, you see
19 there's an 8:59 e-mail where you wrote again to Ms. Kochikar
20 and you say (as read):

21 "There are at least three things in here that I would
22 definitely not want to be public."

23 Do you see that?

24 A. Yes, I see that's the beginning of that sentence.

25 Q. You see what I just read, Mr. Rosenberg?

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1 A. Yes, I see that.

2 Q. Thank you.

3 The third thing that you would definitely not want to be
4 public is, quote, "We feel we need to pay for use of our
5 billing system." Did I read that correctly?

6 A. Yes.

7 Q. In the last paragraph of your e-mail, you write (as read):

8 "Rather than saying we can put this in writing
9 because these are a set of terms we'd gladly publish and
10 make available to any partner, which I don't think is
11 true, I would rather tell Wall Street Journal that we
12 can't put this in writing exactly because we are doing
13 something for them that we would not make available to all
14 partners."

15 Correct?

16 A. Yes, I see that it says that.

17 Q. And you go on to write (as read):

18 "Again, I'm happy to deliver that message to the
19 highest levels."

20 Correct?

21 A. Sorry, I don't see that on the screen here so I'm just
22 checking.

23 Q. It's the next sentence. "Again" --

24 A. Yes, okay.

25 Q. So this -- you see this says (as read):

1 "Again, I'm happy to deliver that message to the
2 highest levels."

3 Correct?

4 **A.** Yes, I see that it says that.

5 **Q.** Okay. Later that afternoon at 4:03 p.m. Ms. Kochikar
6 responds to your e-mail, and this is now on page 1. Do you see
7 her response?

8 **A.** Yes, I see that.

9 **Q.** And if you go to the bottom of her e-mail now on page 2,
10 she addresses your third point about needing to pay for use of
11 Google Play Billing system; correct?

12 **A.** Yes, I see that.

13 **Q.** And Ms. Kochikar says -- begins by saying (as read):

14 "Interestingly, Wall Street Journal is among the apps
15 that fall within the exceptions."

16 Do you see that?

17 **A.** I see that.

18 **Q.** And that exception -- that reference is to the exception
19 we just saw in the policy that exempts purchases for content
20 that can be consumed outside of the app; correct?

21 **A.** Yes, I believe that's what she was referring to.

22 **Q.** Next she says (as read):

23 "We are, therefore, offering some incentives."

24 Do you see that?

25 **A.** Yes.

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1 Q. And then she says in parenthetical (as read):

2 "I prefer the word to 'pay,'" quote/unquote. Smiley
3 face.

4 Do you see that?

5 A. I see that.

6 Q. And that smiley face refers to the fact that the incentive
7 was, in fact, a payment; correct?

8 A. I don't know what she meant by the smiley face.

9 Q. You certainly called it "pay Wall Street Journal to use
10 our billing system"; correct?

11 A. Yes.

12 Q. She then says that (as read):

13 "The payment is intended to get them to improve their
14 app quality, use our payment system, and do both in time
15 for their busiest purchase season, which is Q4."

16 Correct?

17 A. Yes, I see that.

18 Q. All right. If you go up and you can go to the second
19 paragraph in the e-mail beginning with "I also like," do you
20 see that Ms. Kochikar is suggesting that the agreement should
21 be in writing? Correct?

22 A. Yes, I believe that's what she was suggesting.

23 Q. And five days later if we go further up, do you see that
24 Ms. Kochikar is again reaching out to you?

25 Now to Ms. Kochikar's e-mail, please, at 9:00 a.m.

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1 You see she's telling you (as read):

2 "Based on our conversation yesterday, it appears that
3 you did not read my response to your concern."

4 Do you see that?

5 **A.** Yes, I see that.

6 **Q.** And that concern is the concern about putting this
7 agreement in writing; correct?

8 **A.** Yes. I think it was the sets of concerns that I laid out
9 in the prior e-mail.

10 **Q.** Well, let's see what you thought at the time.

11 If we go all the way to the top, you say (as read):

12 "I did read this and still have the same concerns
13 vis-a-vis the contract."

14 Right?

15 **A.** Yes, I see that.

16 **Q.** Now, the *Wall Street Journal* did, in fact, adopt
17 Google Play Billing; correct?

18 **A.** Yes, I believe so.

19 **Q.** And we can't know under what terms because no written
20 agreement was executed; right?

21 **A.** Yes, I don't think there was a separate agreement.

22 **Q.** All right. You can close out of this one.

23 Now, while the billing policy exemption was in place,
24 Google also created something called the Living Room
25 Accelerator Program or LRAP?

1 **A.** Yes.

2 **Q.** And one of the goals of the LRAP program was to persuade
3 subscription video app developers to adopt Google Play Billing
4 in lieu of or at least alongside their other payment services;
5 right?

6 **A.** Yes, that was one of the goals.

7 **Q.** And the reason persuasion was needed was because the video
8 streaming developers under the exemption could opt for another
9 payment solution; correct?

10 **A.** I think some of them viewed it that way, yes.

11 **Q.** And because these developers had alternatives, you
12 understood that they would not take Google Play Billing at
13 30 percent; right?

14 **A.** We had discussions with many of them. A number of them
15 said that they couldn't do it at 30 percent.

16 **Q.** Okay. You understood that those folks with video
17 applications that were subject to the exemption had alternative
18 payment solutions that they could use that charged a lot less
19 than 30 percent; correct?

20 **A.** Yes, I understood they had options they preferred.

21 **Q.** And they had options that cost a lot less than 30 percent;
22 correct?

23 **A.** I don't know how much their options cost, but they
24 preferred them.

25 **Q.** No, I understand you don't know the exact pricing terms,

1 but you understood that they were looking at other payment
2 solutions, like PayPal, and I don't know if Stripe already
3 existed back then, but others, and those cost nothing like
4 30 percent; correct?

5 **A.** Yes, as it refers to payment, but they had other items in
6 their cost structure.

7 **Q.** Sir, the option that they had under the exemption is to
8 say no to Google Play Billing and move to another payment
9 solution that charged a lot less than 30 percent; correct?

10 **A.** Yes, that was their interpretation.

11 **Q.** Sir, that was the reality, that was the option that was
12 open to them. They could move to another payment solution that
13 charged a lot less; correct?

14 **A.** Yes, they did that at the time.

15 **Q.** Now, because of that, Google felt that it needed to offer
16 Netflix, for instance, revenue share of 85 percent instead of
17 70 percent in order to get them to adopt Google Play Billing;
18 correct?

19 **A.** Yes, I believe that was part of the LRAP program.

20 **Q.** That is what you believe you needed to offer Netflix at
21 the time, 15 percent?

22 **A.** Yes.

23 **Q.** And you also felt that you needed to offer 85/15 rev share
24 to Hulu to get Hulu to adopt Google Play Billing; correct?

25 **A.** Yes.

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1 Q. And even with 15 percent, Google -- Hulu -- sorry -- still
2 did not adopt Google Play Billing; correct?

3 A. Yes, I believe that's true.

4 Q. Now, if you can turn to Exhibit 800 in your binder.

5 And this is an e-mail that you sent to the same
6 Mr. Kassardjian back in May 26, 2016. Do you see that?

7 A. Yes, I see that.

8 MR. EVEN: Your Honor, I move to admit Exhibit 800.

9 MS. BELL: No objection.

10 THE COURT: It's admitted.

11 (Trial Exhibit 800 received in evidence.)

12 BY SPEAKER 3:

13 Q. So let's publish that and go to the third paragraph on the
14 e-mail that is from 4:17 p.m. from Mr. Rosenberg.

15 And do you see in the third paragraph you say (as read):

16 "I think it's fine for us to aggressively pursue
17 getting DIRECTV on our billing system, but we can't do it
18 on policy grounds."

19 Do you see that?

20 A. Yes, I see that.

21 Q. And the reason you could not do it on policy grounds is
22 that at the time you felt the exception applied to DIRECTV;
23 correct?

24 A. I felt that it was unclear and DIRECTV had concerns.

25 Q. Sir, you felt that the exception applied to DIRECTV at the

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1 time; correct?

2 **A.** We were comfortable not enforcing, yes.

3 **MR. EVEN:** Your Honor, I'd like to turn your attention
4 to Rosenberg deposition transcript 249, 15 to 21. That's
5 Tab A.

6 **THE COURT:** 249?

7 **MR. EVEN:** 249, 15 to 21.

8 (Pause in proceedings.)

9 **THE COURT:** Yes, that's fine.

10 **MR. EVEN:** Can we publish that, please?

11 **BY MR. EVEN:**

12 **Q.** Sir, you and I met before at your deposition; correct?

13 **A.** Yes.

14 **Q.** And you gave sworn testimony at the time?

15 **A.** Yes.

16 **Q.** And were you asked at the time (as read):

17 "Your own interpretation was that the exception
18 clearly applied to DIRECTV; correct?"

19 **A.** Yes.

20 **Q.** And you answered (as read):

21 "In -- I think in this e-mail I think what I said
22 here was that was their choice so presumably at the time I
23 felt that the exception applied to them."

24 Correct?

25 **A.** I see that, yes.

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1 Q. That was your sworn testimony at the time; right?

2 A. Yes.

3 Q. Let's go back to Exhibit 800.

4 The next thing you say is (as read):

5 "So it's about carrots not sticks."

6 Do you see that?

7 A. I see that.

8 Q. And, in other words, you proposed that Google should use
9 rewards rather than punishment to get developers to come --
10 that fall under the exception to adopt Google Play Billing;
11 correct?

12 A. In this case, yes, I was thinking about incentives.

13 Q. That's a yes?

14 A. Yes.

15 Q. And the carrot here is lower prices to meet competition
16 from other payment solutions; correct?

17 A. (Witness examines document.) Yes. If you're referring to
18 LRAP, yes.

19 Q. And by contrast, where there was no exemption or the
20 exception clearly didn't apply, there would be the stick of
21 potentially removal from the Google Play Store; correct?

22 A. I'm not sure what "stick" is referring to.

23 Q. Well, you wrote it, and at the time the stick for somebody
24 who refused to integrate Google Play Billing, the ultimate
25 stick would be to tell them "You may not distribute your app

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1 through the Google Play Store"; correct?

2 **A.** Yes, that's likely what this meant.

3 **Q.** So we saw that Google offered lower rev share to Netflix,
4 to Hulu, to DIRECTV, to others under LRAP. By contrast, Google
5 never offered a deal to lower the service fee to any developer
6 that did not even arguably fall within any exception to the
7 requirement to use Google Play Billing; correct?

8 **A.** Yes.

9 **Q.** Now, one of the others who also fell under the exception
10 and did not use Google Play Billing was YouTube; correct?

11 **A.** Yes.

12 **Q.** And YouTube is a Google app; correct?

13 **A.** Yes.

14 **Q.** Let's go to Exhibit 799 in your binder.

15 You see this is an e-mail between yourself and
16 Mr. Lagerling dated October 8th, 2013.

17 **A.** (Witness examines document.) Yes, I see that.

18 **MR. EVEN:** And, Your Honor, I move to admit
19 Exhibit 799.

20 **MR. KRAVIS:** No objection.

21 **THE COURT:** It's admitted.

22 (Trial Exhibit 799 received in evidence.)

23 **MR. EVEN:** Publish it.

24 **BY MR. EVEN:**

25 **Q.** At the bottom of the first page, Mr. Rosenberg, you sent

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1 an e-mail at 7:41 a.m. where you say (as read):

2 "I fear that" -- and it refers to YouTube -- "I fear
3 that YouTube is trying to find reasons not to use Play's
4 in-app billing for its premium services."

5 Do you see that?

6 **A.** Yes.

7 **Q.** And at 7:52 you sent another e-mail saying (as read):

8 "By the way, this is not about money or control. It
9 puts us in a difficult position with our third-party
10 ecosystem if we have first-party apps that" -- "a
11 first-party app" -- sorry -- "that doesn't use Play
12 billing."

13 Correct?

14 **A.** Yes.

15 **Q.** Now, this was not about money because any payment between
16 YouTube and Play would just be some intercompany accounting
17 exercise; correct?

18 **A.** Yes, potentially.

19 **Q.** Yes. Correct? These are both divisions of Google;
20 correct?

21 **A.** Yes, they're both Google products.

22 **Q.** And you were concerned about trying to get other
23 developers to use Google direct billing at 30 percent if you
24 couldn't even get YouTube, your own app, to do it for free;
25 right?

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1 **A.** Yes. I don't remember all of YouTube's reasons for not
2 doing it, but certainly we felt --

3 **Q.** Sir, it's a simple yes or no.

4 You were concerned about trying to get other developers to
5 use Google direct billing at 30 percent if you could not even
6 get your own YouTube app to do it for free; right?

7 **A.** Yes, we were concerned.

8 **Q.** Now, at 10:43 on October 7, it's another e-mail up the
9 chain, you write that (as read):

10 "YouTube gave us some additional requirements which
11 we don't yet support so they went with a direct wallet
12 integration for their initial launch."

13 Do you see that?

14 **A.** Yes.

15 **Q.** And then you say (as read):

16 "They've said that as soon as we support their
17 requirements, they'll migrate."

18 Right?

19 **A.** Yes, I see that.

20 **Q.** And the idea here was Google Play Billing didn't have some
21 functionality that YouTube thought was important to its
22 business; right?

23 **A.** Yes.

24 **Q.** Now, you then say at the end of that paragraph (as read):

25 "Everybody's focused on that as a goal."

1 Right?

2 A. Yes, I see that.

3 Q. All right. Now, this e-mail is from 2013; correct?

4 A. Yes.

5 Q. YouTube did not migrate to Google Play Billing in 2013;
6 correct?

7 A. Correct.

8 Q. It didn't migrate in 2014?

9 A. Correct.

10 Q. It didn't migrate in 2015?

11 A. Correct.

12 Q. It didn't migrate for nine years after this e-mail;
13 correct?

14 A. I don't know when YouTube eventually migrated. I know
15 they're -- they're on Google Play Billing now.

16 Q. Okay. You know that in 2022 when you were in deposition,
17 you told me that they're still in the process of migrating;
18 correct?

19 A. Yes, that sounds right.

20 Q. Okay. You can put away 799.

21 By the way, when YouTube was made to migrate, it still had
22 concerns about features that Google Play Billing could not
23 support; correct?

24 A. I don't know. I wasn't in those conversations.

25 Q. All right. Now, fast-forward 2020. In August of 2020,

1 Epic sued Google. You know that; right?

2 A. Yes.

3 Q. And in September of 2020, Google announced that it would
4 change the Google Play Store payment policy to remove the
5 exception for digital content that's available for use outside
6 the app; correct?

7 A. Yes. I believe we announced the change in 2020. I was
8 less involved at that time.

9 Q. Sir, yes, you believe announced the change in 2020?

10 A. Yes.

11 Q. Now, in September 2020, the policy announcement made it
12 more explicit that all developers selling digital goods and
13 services in their apps were required to use Google Play's
14 billing system, including those who had previously fallen
15 within the exception; correct?

16 A. Yes, I believe that's what the clarification was about.

17 Q. And it was only after that exception was eliminated that
18 YouTube was forced by Google to migrate to Google Play Billing;
19 correct?

20 A. I think it's correct that YouTube migrated after that
21 date.

22 Q. Okay. So as we've seen historically, there have been
23 developers, quite a few, that sold digital goods and content on
24 the Google Play Store without using Google Play Billing;
25 correct?

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1 A. Yes, there were some.

2 Q. And before August 2020, Google has never, ever charged
3 developers any fee for transactions that did not utilize
4 Google Play Billing; correct?

5 A. Yes, I believe that's true.

6 Q. Now, the jury has heard a bit about user choice billing.
7 You know, what that is; right?

8 A. Vaguely I do.

9 Q. And you understand this is a new program from like 2022 or
10 2023; correct?

11 A. That's my general understanding. Again, I haven't been
12 full-time at the company the last year.

13 Q. Okay. You understand, do you not, that user choice
14 billing has been the first time ever that Google has imposed
15 any fee on an in-app transaction that does not use Google Play
16 Billing?

17 A. I believe that's true, but I'm not an expert on that.

18 Q. Okay. Turn, please, in your binder to Exhibit 5963.

19 A. (Witness examines document.)

20 Q. Do you have it?

21 A. Yes.

22 Q. Now, this is a slide deck from your files titled "GMS apps
23 on Low RAM - leadership update" dated May 25, 2016. Do you see
24 that?

25 A. Yes.

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1 **MR. EVEN:** Your Honor, I move to admit Exhibit 5963
2 into evidence.

3 **MR. KRAVIS:** No objection.

4 **THE COURT:** It is admitted.

5 (Trial Exhibit 5963 received in evidence.)

6 **MR. EVEN:** No need to publish. You can put that to
7 the side.

8 **BY MR. EVEN:**

9 **Q.** The Google Play Store is preloaded on the home screen of
10 virtually every Android phone through the MADA; correct?

11 **A.** Yes, that's correct.

12 **Q.** Now, for another app store to try to compete, it first
13 needs to get on users' smartphones; correct?

14 **A.** Yes.

15 **Q.** And under the current rules for Android, the only options
16 for competing stores to get on users' phones is either through
17 direct downloading or preinstallation; correct?

18 **A.** Yes, I believe that's true.

19 **Q.** So let's talk a little bit about direct downloading first.

20 Direct downloading an app from the web triggers what's
21 known as the unknown sources install flow; correct?

22 **A.** Yes, I believe so.

23 **Q.** And Google is aware that the unknown sources flow
24 introduces so much friction that it makes it impossible for
25 competing stores to gain traction through direct downloading;

1 correct?

2 **A.** I don't know if those are the words I would use, but I
3 think it provides some notification to users for --

4 **Q.** It provides meaningful friction that prevents other stores
5 from gaining traction; correct?

6 **A.** It provides some security warnings to users.

7 **Q.** Sir, and those security warnings provide meaningful
8 friction that prevents other stores from gaining traction;
9 correct?

10 **A.** They're extra steps. I don't know if --

11 **Q.** Okay.

12 **A.** -- I would use the word "friction."

13 **Q.** All right. Let's move to Exhibit 682 and look at that a
14 little bit.

15 This is a presentation that comes from your file and was
16 presented to your team back in 2017 and is titled "Amazon
17 competitor deep dive." Do you see that?

18 **A.** I see that.

19 **MR. EVEN:** I move to admit Exhibit 682 at this time.

20 **MR. KRAVIS:** No objection.

21 **THE COURT:** It is admitted.

22 (Trial Exhibit 682 received in evidence.)

23 **BY MR. EVEN:**

24 **Q.** Now, the Amazon App Store is a competitor of Google Play;
25 correct?

1 **A.** Yes.

2 **Q.** And it's a competitor on Android; correct?

3 **A.** Yes.

4 **Q.** All right. So let's go to page 2 and see what you thought
5 back in 2017.

6 So the title of this slide is "Amazon emerging as a major
7 challenge to Play in gaming globally." Do you see that?

8 **A.** I see that.

9 **Q.** All right. Now, below that on the left-hand side do you
10 see the slide states "In JP (and other markets) are securing
11 top content and migrating HVUs"? Do you see that?

12 **A.** Yes, I see that.

13 **Q.** And "JP" is Japan?

14 **A.** Yes.

15 **Q.** And "HVUs" is an acronym for high-value users; correct?

16 **A.** Yes.

17 **Q.** And high-value users are users who spend a lot of money on
18 apps; right?

19 **A.** Yes.

20 **Q.** Now, the right column states "This is a broad threat" and
21 lists deeper pocket, global reach, and significant long-term
22 ambitions in the bullets below; right?

23 **A.** Yes, I see that.

24 **Q.** And those are all threats that this slide attributed to
25 the Amazon App Store as of 2017; correct?

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1 **A.** Yes, I see that's the way this presentation characterizes
2 it.

3 **Q.** All right. If we go to the blue box below, the first
4 paragraph reads "Bad News." Do you see that?

5 **A.** Yes, I see that.

6 **Q.** And the "Bad News" is (as read):

7 "We face the risk of becoming a showroom for Amazon
8 or other app stores."

9 Correct?

10 **A.** Yes.

11 **Q.** And the last sentence under "Bad News" reads (as read):

12 "JP might just be the start as Amazon historically
13 tries different approaches in a market, usually for a
14 couple of years, before scaling up and going global with
15 services."

16 Did I read that correctly?

17 **A.** Yes.

18 **Q.** And at the time you believed Japan might be the launching
19 pad for a more global threat from Amazon; correct?

20 **A.** That was the perspective expressed on the slide, yes.

21 **Q.** That was your perspective at the time; right?

22 **A.** I didn't -- I wasn't close enough to it. I was trying to
23 get educated.

24 **MR. EVEN:** Well, Your Honor, if I may go to Rosenberg
25 deposition transcript Tab A, 291, 20 to 24.

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(Pause in proceedings.)

THE COURT: That's okay.

MR. EVEN: Let's put that up, please.

BY MR. EVEN:

Q. In your deposition you were asked (as read):

"And you thought that Japan might be the launching place for a more global threat; correct?"

And you said (as read):

"We had to -- we had to consider that scenario."

Right?

A. Yes, I see that.

Q. Okay. Going to the next point below -- sorry. Before we go to the next point below, let's go back to Slide 2 of 682.

Now, in the middle there do you see that it says (as read):

"Amazon JP expected to be 2.2 percent of Play JP by year end"?

Do you see that in the middle of the "Bad News"?

A. Yes, I see that.

Q. And so Amazon emerging as a major challenge, what Play at the time believed was a major challenge is somebody who reached 2.2 percent of what Play was; right?

A. I think those were different points, but I think the concern was what Amazon could become as they continued investing.

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1 Q. I understand that. Sir, at the time you believed that
2 Amazon is emerging as a major challenge based on the fact,
3 among other things, that it reached a size of 2.2 percent of
4 Play JP; right?

5 A. No, I wouldn't agree with that characterization.

6 Q. Okay. We will look a bit more.

7 So let's go to the "Good News."

8 The "Good News" that you say here is that (as read):

9 "Amazon is yet to establish critical mass."

10 Do you see that?

11 A. Yes, I see that.

12 Q. And you say (as read):

13 "We have an opportunity to react before this
14 happens."

15 Correct?

16 A. I see that it says that, yes.

17 Q. All right. So let's talk a little bit about critical
18 mass.

19 If you can go to Slide 14, and let's take a look at the
20 points -- the talking points below.

21 And the first batch of them says (as read):

22 "Play benefits from network effects.

23 "Users come to Play because we have by far the most
24 compelling catalog of apps/games.

25 "Developers come to Play because that's where the

1 users are."

2 Correct?

3 **A.** Yes, I see that it says that.

4 **Q.** Okay. And the next talking point says (as read):

5 "Amazon will struggle to break those network effects.

6 "Users won't go to Amazon because their catalog of
7 apps/games is very limited.

8 "Developers won't focus on Amazon because they don't
9 have users."

10 Right?

11 **A.** I see that it says that.

12 **Q.** And then the next one says that Amazon has essentially two
13 options. It must build a critical mass of users or it must
14 build a critical mass of developers; correct?

15 **A.** Yes, I see that it says that.

16 **Q.** And then if you go one below, it says (as read):

17 "Once they have their own critical mass of users and
18 developers, they'll also benefit from network effects.

19 "At that point, it will become much harder for us to
20 compete."

21 Right?

22 **A.** I see that it says that, yes.

23 **Q.** That's what the slide that was presented to your team said
24 back in 2017; correct?

25 **A.** Yes.

1 Q. Let's go to Slide 12. Let's see the efforts that Amazon
2 has put in to try and gain developers and users.

3 So, first of all, on page 12 this reads (as read):

4 "Amazon offering attractive incentive to developers
5 to port games to the Amazon App Store."

6 Do you see that?

7 A. Yes, I see that.

8 Q. Okay. And if you go all the way down, you see that this
9 says (as read):

10 "So far only 20 of top 100 apps on Play have
11 published to Amazon."

12 Do you see that?

13 A. Yes, I see that.

14 Q. And the last portion of that bullet point says (as read):

15 "Decisions may change as Amazon gets more users."

16 Correct?

17 A. Yes, I see that.

18 Q. In other words, to get more developers, Amazon needs more
19 users; right?

20 A. Yes, I think that's what this is saying.

21 Q. All right. So let's talk about what Amazon did for users.

22 And if you go to page 11, this slide is about trying to
23 get users; correct?

24 A. Yes, I believe so.

25 Q. And you see here at the top that (as read):

1 "Amazon's strongly promoting its 15 percent plus
2 discount on IAPs available via Play..."

3 Do you see that?

4 **A.** Yes, I see that.

5 **Q.** Now, Amazon came to users and said, "Anything you can buy
6 on Play, come buy on my store. I'll give you a 15 percent
7 discount"; right?

8 **A.** I don't think it was anything. I think for the products
9 they had that might have had comparable IAPs on Play.

10 **Q.** Only for products they had. They didn't sell anything
11 they didn't have, I understand it.

12 Anything that was available on both, they said, "Come buy
13 it on our store, and we will give you a 15 percent discount";
14 right?

15 **A.** Yes.

16 **Q.** All right. Now, if you go down to the bullet below the
17 blue box, the bottom one it says (as read):

18 "Significant hurdle to switching to Amazon APK."

19 Right?

20 **A.** Yes, I see that.

21 **Q.** And that notes the fact that the Amazon APK is essentially
22 the package that users need to download in order to install and
23 get Amazon -- the Amazon store on their phone; correct?

24 **A.** Yes, unless it's preinstalled.

25 **Q.** Sir, significant hurdle to switching to the Amazon APK,

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1 this refers to somebody who needs to download and install the
2 Amazon APK from a website; correct?

3 **A.** Yes, that's fair.

4 **Q.** And then to the right of that it explains why users are
5 not going, why this is a significant hurdle, and it says (as
6 read):

7 "Process is quite complex. Involves 14 steps."

8 Do you see that?

9 **A.** I see that.

10 **Q.** And the 14 steps is a reference to the sideloading flow
11 that a user must go through to install the Amazon App Store
12 through sideloading; correct?

13 **A.** Yes, in addition to any other setup steps they have from
14 Amazon.

15 **Q.** Sir, at the time the 14 steps was a reference to the
16 sideloading flow that a user must go through to install the
17 Amazon App Store; correct?

18 **A.** I'm not sure. I know that was part of it. I'm not sure
19 if that was all of it.

20 **MR. EVEN:** Sir, Your Honor, I need to please turn your
21 attention to the transcript at 293:17 to 2 -- sorry -- 293:23.

22 **THE COURT:** 393?

23 **MR. EVEN:** 293 --

24 **THE COURT:** 293.

25 **MR. EVEN:** -- line 23, to 294 at line 3.

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(Pause in proceedings.)

THE COURT: Yes, that's fine.

BY MR. EVEN:

Q. You see your testimony was at your deposition under oath
(as read):

"This is a reference to the sideloading flows that a
user must go through to install the Amazon App Store;
right?

"I would assume that's -- that's what this is
referring to."

And you go on to talk about --

A. Yes, and I believe I then said there might be other steps
as well.

Q. If we can go all the way to 6.

You then go to talk about preloading, sir. Nothing about
other steps.

So is your point that there may be other steps beyond the
14?

A. I'm not sure what the 14 encapsulated.

Q. All right. At the time you testified that the 14 is a
reference to the unknown sources install flow; correct?

A. Yes.

Q. All right. Now going back to the heading of the slide,
Google recognized at the time that as a result of the unknown
source warning, the hurdles were too high for most users;

1 right?

2 A. I think that's what this is implying, yes.

3 Q. And, in fact, the Amazon App Store never reached critical
4 mass in Japan or anywhere else; correct?

5 A. I don't know the current state, but I don't think it
6 became large.

7 Q. It did not become large. That means it did not reach
8 critical mass; correct?

9 A. I assume so.

10 Q. All right. Let's move to a different topic. You can put
11 this down.

12 Over the years Google has had conversations with Samsung
13 about how Google and Samsung could collaborate across their
14 various app store offerings; correct?

15 A. Yes.

16 Q. And so in 2015, for instance, Google proposed to Samsung
17 that the Samsung Galaxy Store would become a store within the
18 Play Store?

19 A. Yes, that sounds right.

20 Q. And Google and Samsung did not reach a deal back in 2015;
21 correct?

22 A. Correct.

23 Q. But you kept speaking to Google on a regular basis;
24 correct?

25 A. To Samsung?

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1 Q. To Samsung. Sorry.

2 A. Yes.

3 Q. And by 2018 you learned that Samsung may be talking to
4 some top game developers about distributing their games in the
5 Samsung App Store; correct?

6 A. Yes.

7 Q. And around this time Samsung also moved its Galaxy App
8 Store to the default home screen on its devices?

9 A. Yes, I believe that's right.

10 Q. All right. So let's talk a little bit about how all that
11 fits with Epic.

12 In June 2018, Epic told Google that it would be
13 introducing its Android version of Fortnite off of the
14 Play Store; correct?

15 A. Sorry. Could you repeat the question?

16 Q. In June of 2018, Epic told Google it would be introducing
17 its Android version of Fortnite off of the Play Store; correct?

18 A. Yes.

19 Q. And you understood that Epic's plan at the time was to
20 distribute Fortnite on Android either directly through its
21 website or via an alternative app store or both; correct?

22 A. Yes.

23 Q. And you thought at the time that the business implications
24 of Epic launching off the Google Play Store were quite serious;
25 correct?

1 A. Yes.

2 Q. And, in fact, you believed that not having Fortnite on the
3 Google Play Store would create significant risks for the
4 Android ecosystem and the Google Play Store business; correct?

5 A. Yes.

6 Q. Now, when Mr. Sweeney told you that Fortnite would not
7 launch on the Play Store on Android, Mr. Sweeney also told you
8 that Epic wasn't seeking a Google Play counterproposal or a
9 special -- or special terms for Fortnite; right?

10 A. Yes.

11 Q. And you responded to Mr. Sweeney saying that you
12 understood and that Google was not preparing a counterproposal;
13 correct?

14 A. Yes.

15 Q. And then you went ahead and prepared a counterproposal for
16 a special deal; right?

17 A. We prepared a proposal for marketing support, yes.

18 Q. You prepared a counterproposal for a special deal for
19 Epic; correct?

20 A. Yes.

21 Q. Now, you presented to the Business Council this special
22 package intended to convince Epic to launch Fortnite on the
23 Google Play Store; right?

24 A. Yes.

25 Q. And if you turn to Exhibit 805 in your binder, do you see

1 that this is the document that accompanied your presentation to
2 the Business Council regarding the Epic proposal?

3 **A.** Yes, I believe that's what this is.

4 **Q.** Okay. This has been admitted before, I believe, so we can
5 turn to page 2 and publish it. And let's go to the talking
6 points for a second.

7 You told the Business Council that Mr. Sweeney had a lack
8 of belief in the value added by the Google Play Store; correct?

9 **A.** Yes, that was part of our story. I don't know if I said
10 that, but that was part of what was conveyed.

11 **Q.** And you also conveyed to the Business Council that
12 Mr. Sweeney trusts openness and sometimes acts as an idealist?

13 **A.** I see that it says that here.

14 **Q.** I gather you thought at the time that idealist is a bad
15 thing?

16 **A.** Not necessarily, no.

17 **Q.** Not necessarily, okay.

18 Now based on this slide, if we go to the first bullet
19 point under "Not having Fortnite," you believe that Fortnite's
20 absence from the Google Play Store could result in at least
21 130 million of direct revenue loss for the Google Play Store;
22 correct?

23 **A.** Yes, I see that it says that.

24 **Q.** And that estimate reflected the lost revenue to
25 Google Play from the fact that in-app transactions in Fortnite

1 would not be using Google Play Billing; correct?

2 **A.** Yes.

3 **Q.** But at the time you believed that the much larger impact
4 of Fortnite leaving the Google Play Store would come in the
5 long-term if other major developers followed it out of the
6 Google Play Store; correct?

7 **A.** Yes, that was also a concern.

8 **Q.** And that is what we see there on the second bullet point
9 under "Not having Fortnite" where you talk about downstream
10 impact of 550 million up to 3.6 billion potential revenue loss
11 if broad contagion to other developers; right?

12 **A.** Yes, I see that.

13 **Q.** And you used the term "contagion" to describe this risk of
14 other major game developers following Epic; correct?

15 **A.** Yes.

16 **Q.** Now, you sought approval from Business Council for a set
17 of initiatives valued at 208 million to Epic; correct?

18 **A.** I --

19 **Q.** It's on the same slide. If you go down under proposal, do
20 you see that?

21 **A.** Yes, I see that.

22 **Q.** And you also floated an even bigger deal that would
23 provide Epic with value of nearly half a billion dollars;
24 right? 478 million?

25 **A.** Yes, I see that.

1 Q. All right. If you can turn to page 5 of this slide deck.

2 You were also concerned that if Fortnite ended up on the
3 Samsung App Store, Fortnite may legitimize the Samsung store;
4 correct?

5 A. I see that, yes.

6 Q. And by "legitimize" you mean maybe they can draw enough
7 users in to reach critical mass; correct?

8 A. I felt it would make it stronger, yes.

9 Q. Now, the Business Council approved your offer to Epic;
10 right?

11 A. Yes.

12 Q. But Mr. Sweeney rejected your offer to Epic; right?

13 A. Yes.

14 Q. Now, in July 2018 you learned that the install flow for
15 Fortnite would involve users first downloading the Epic game
16 launcher and then the launcher would download and install the
17 Fortnite app; correct?

18 A. Yes.

19 Q. And a launcher is essentially like a store; right? It's
20 an app that installs, updates, handles all that for another
21 app; correct? Or other apps.

22 A. Yes. I'm hesitating because I don't know if it was a
23 launcher or an installer; but, yes, it was something that had
24 the capability to launch other apps.

25 Q. Install other things?

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1 A. Yes.

2 Q. Now, you believe that to download Fortnite, a user would
3 have to go through the unknown sources install flow, which
4 would require 17 steps; right?

5 A. I don't know about the steps specifically, but the user
6 would have to go through the unknown sources flow.

7 Q. You remember telling folks on your team after you saw the
8 install flow that if your math is correct, they designed a 17
9 screen flow to circumvent a one screen flow?

10 A. That's possible, yes.

11 Q. Now, your team believed that the user experience of
12 getting Fortnite on Android through unknown sources would be
13 abysmal; right?

14 A. It sounds reasonable that someone would have said that.

15 Q. Now, you also told Epic that you had security concerns
16 with the process because it required users to enable downloads
17 from unknown sources; correct?

18 A. Yes, I believe we did express security concerns.

19 Q. Now, in the following weeks, you spoke multiple times with
20 your contacts at Samsung to try and understand Samsung's plans
21 for Fortnite; right?

22 A. I don't know if it was multiple times, but I know there
23 were conversations about it.

24 Q. By early August, you learned that Fortnite would be
25 available for installation on two Samsung phones, the Note 9

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1 and the S -- sorry -- one phone, the Note 9; and one tablet,
2 the 10S; right?

3 **A.** Yes, that sounds right.

4 **Q.** And at the time you believed that the Fortnite APK would
5 be downloaded to these devices from fortnite.com; right?

6 **A.** Yes, I believe so.

7 **Q.** And as of August 8, 2018, a day before the launch, you
8 were waiting for double confirmation from Samsung that they
9 will not be hosting the Fortnite installer or launcher in the
10 Galaxy Store either; right?

11 **A.** Yes, possibly. I don't remember specifically.

12 **MR. EVEN:** If we can bring up Exhibit 806. Sorry
13 don't bring it up. It's not been admitted. Sorry. My
14 mistake.

15 **BY MR. EVEN:**

16 **Q.** Mr. Rosenberg, go to Exhibit 806.

17 You see this is a chain of e-mails between yourself, Colin
18 Smith, and others back in August of 2018?

19 **A.** Yes, I see that.

20 **MR. EVEN:** Move to admit that, Your Honor.

21 **MR. KRAVIS:** No objection.

22 **THE COURT:** Admitted.

23 (Trial Exhibit 806 received in evidence.)

24 **MR. EVEN:** Let's publish.

25 \\\

1 **BY MR. EVEN:**

2 **Q.** And you see this e-mail at 4:39, and if we go to the
3 "Fortnite APK" and highlight that, you see that it says (as
4 read):

5 "Fortnite APK will definitely be served from
6 fortnite.com. Waiting for double confirmation from
7 Samsung that they will not be hosting the installer APK in
8 Samsung App Store."

9 Do you see that?

10 **A.** Yes, I see that.

11 **Q.** Okay. Do you understand now that at the time you
12 understood that the Fortnite game would be downloaded from
13 Epic, but you were waiting to be -- for confirmation that the
14 launcher would not be hosted on the Galaxy Store?

15 **A.** If by "launcher" you're referring to installer, yes, that
16 was my understanding.

17 **Q.** Okay. Now, later that day you learned that Samsung did
18 intend to offer the Fortnite installer on the Samsung Galaxy
19 Store; right?

20 **A.** Yes.

21 **Q.** And you still assumed, though, that even if Samsung hosted
22 the installer, you assumed the installer would need to go
23 through the unknown sources flow to install Fortnite; correct?

24 **A.** I'm not sure if I assumed that.

25 **Q.** Well, let me -- if you turn to Exhibit 761 in your binder.

1 **A.** (Witness examines document.)

2 **Q.** You see this is an e-mail chain from yourself, Sameer
3 Samat, and others, and you were copied on some and sending some
4 back in August 2018?

5 **A.** Yes, I see that.

6 **MR. EVEN:** Your Honor, I'll move to admit Exhibit 761.

7 **MR. KRAVIS:** No objection.

8 **THE COURT:** It is admitted.

9 (Trial Exhibit 761 received in evidence.)

10 **BY MR. EVEN:**

11 **Q.** All right. And if you go to page 5 of Exhibit 761, you
12 see that you say "FYI" and then there are several bullet
13 points. The second bullet point is (as read):

14 "Samsung will host and deliver the Fortnite installer
15 APK likely as a privileged install. No unknown sources."

16 Do you see that?

17 **A.** I see that.

18 **Q.** And below that you say (as read):

19 "The Fortnite installer APK will then prompt the user
20 to download the game from Epic presumably requiring the
21 unknown sources prompt."

22 Do you see that?

23 **A.** Yes, I see that.

24 **Q.** Now, if you go to page 4 of this e-mail, you see there an
25 e-mail from 7:13 p.m. on the same day where you are responding

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1 to Mr. Samat and Mr. Lockheimer's request and saying that you
2 are double confirming -- not single confirming, double
3 confirming -- that unknown sources will still be required for
4 the installer APK to facilitate the download of the game. Do
5 you see that?

6 **A.** I see that.

7 **Q.** All right. Now, if we go to the next e-mail up the chain
8 at 8:50, you see that by 8:50 a.m. the next day, the day of the
9 launch, Mr. Samat is sounding the fire alarm; right?

10 **A.** I'm not sure I understand the question.

11 **Q.** Okay. Let's see what he says.

12 Mr. Samat is letting you and the team know that something
13 is wrong. Do you see that main point, something is wrong?

14 **A.** Yes, I see that.

15 **Q.** And he then says (as read):

16 "The Epic installer never asked me to turn on unknown
17 sources."

18 **A.** I see that.

19 **Q.** Do you see that?

20 And Mr. Samat then says -- points out some other things
21 that are wrong here, obviously wrong; right? (as read):

22 "Obvious things wrong here. One, Note 8, I thought
23 this was a Note 9 thing."

24 Do you see that?

25 **A.** I see that.

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1 Q. And that's Mr. Samat saying "Our understanding from
2 Samsung was that this would be limited to one phone, the Note
3 9, and now I can do it on my Note 8"; right?

4 A. I assume that's what he means here, yes.

5 Q. And the next point is (as read):

6 "Epic installer does not have unknown sources but
7 somehow is able to download and install Fortnite."

8 Correct?

9 A. Yes, I see that.

10 Q. And the next point (as read):

11 "The Epic installer" -- the next page -- "The Epic
12 installer is hosted in the Samsung Galaxy Store. It's not
13 a link out to some website."

14 Do you see that?

15 A. Yes, I see that.

16 Q. Okay. Now, prior to this, the Galaxy Store had never
17 offered any kind of major exclusive for an app or a game;
18 right?

19 A. I'm not sure if that's the case.

20 Q. You're sitting here, you can't remember a major launch of
21 exclusive content on the Galaxy Store; correct?

22 A. I'm not aware of one, no.

23 Q. Yeah. So the thing that was wrong here was that without
24 the abysmal unknown sources install flow, Mr. Samat and you and
25 Mr. Lockheimer and everyone on that chain became very concerned

1 that the Fortnite launch on the Samsung Galaxy Store could, in
2 fact, have a chance to succeed?

3 **A.** No, I don't think that's the concern that was expressed
4 here.

5 **Q.** Okay. We'll see about that.

6 So you as the person in charge of communications with
7 Samsung felt that you were betrayed by Samsung; correct?

8 **A.** I think we were upset because Samsung had not described
9 the full experience.

10 **Q.** Samsung, your competitor, dared to not live up to the
11 handshake agreement you felt you had with them about how small
12 the launch of the Fortnite Epic -- the launch of the Fortnite
13 game would be; correct?

14 **A.** No, I don't agree with that.

15 **Q.** You don't?

16 **A.** No.

17 **Q.** Okay. Do you remember at your deposition I asked you if
18 somebody reached out to Samsung to tell them and convey your
19 unhappiness with the way they launched Fortnite, and you told
20 me no one did?

21 **A.** I assume that's correct.

22 **Q.** Okay. That was not true; right?

23 **A.** In terms of expressing concern to Samsung?

24 **Q.** In terms of reaching out and conveying your dismay to
25 Samsung at the way they reneged on your handshake agreement?

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1 **A.** I'm not sure I understand the handshake agreement you're
2 referring to.

3 **Q.** You don't, okay.

4 In fact, it was you who turned to Samsung; correct?

5 **A.** I don't recall.

6 **Q.** You don't recall.

7 All right. Let's go to Exhibit 8564 in your binder.

8 This is a text message from your files that you sent;
9 correct?

10 **A.** Yes, I see that.

11 **MR. EVEN:** Your Honor, I move to admit Exhibit 8564
12 into evidence.

13 **MR. KRAVIS:** No objection.

14 **THE COURT:** It's admitted.

15 (Trial Exhibit 8564 received in evidence.)

16 **BY MR. EVEN:**

17 **Q.** And this is a text from you to Mr. Jay Kim; right?

18 **A.** Yes, I see that.

19 **Q.** And Mr. Jay Kim is a Samsung executive; correct?

20 **A.** Yes.

21 **Q.** And you told Mr. Kim that you -- that (as read):

22 "Someone on your side was just able to fully download
23 Fortnite on Note 8 with no unknown sources. We really
24 need to understand what's going on."

25 Do you see that?

1 A. Yes, I see that.

2 Q. And you then say "I think DJ should too"; correct?

3 A. Yes, I see that.

4 Q. And "DJ" is a reference to DJ Koh, the CEO of Samsung's
5 mobile business; correct?

6 A. Yes.

7 Q. And you told Mr. Kim that you were very concerned; right?

8 A. I see that.

9 Q. And you were very concerned that Samsung had enabled
10 download of the Fortnite installer without the need for users
11 to enable unknown sources; right?

12 A. Yes, we had security concerns about that.

13 Q. Oh, it's a security concern.

14 So a few weeks ago you told Epic that you were very
15 concerned about a download experience that did require users to
16 enable unknown sources. By the 8th, you all of a sudden are
17 concerned about a download process that does not require it?

18 A. I think both have security issues.

19 Q. Oh. Anyway, it has security with or without unknown
20 sources, I see.

21 All right. You also write that you were surprised that
22 it's a Note 8 given what you said about Note 9 and Tab S4 only;
23 correct?

24 A. Yes.

25 Q. You had a handshake deal, or you felt you had a handshake

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1 deal, with Mr. Kim that the launch would be limited to one
2 phone and would require unknown sources; correct?

3 **A.** No, I wouldn't characterize it as a handshake deal.

4 **Q.** You wouldn't characterize it.

5 Okay. By that evening after more texts, a Mr. Eui-Suk
6 Chung of Samsung reached out essentially to apologize; correct?

7 **A.** I don't remember specifically.

8 **Q.** You don't remember specifically.

9 Let's go to Exhibit 8568.

10 **A.** (Witness examines document.)

11 **Q.** This is a text message between yourself and Mr. Chung?

12 **A.** Yes.

13 **MR. KRAVIS:** This one I object. This wasn't a
14 disclosed exhibit. It's not impeachment. It's not his
15 writing.

16 **MR. EVEN:** It is impeachment, Your Honor. He just
17 said he doesn't believe that he --

18 **THE COURT:** Is it to this witness?

19 **MR. EVEN:** Sorry?

20 **THE COURT:** Did the witness send this?

21 **MR. EVEN:** I'm sorry, Your Honor, I didn't --

22 **THE COURT:** Did the witness send this?

23 **MR. EVEN:** Yes.

24 **THE COURT:** Oh, that's fine. Go ahead.

25 **MR. EVEN:** Oh, the witness received it. Sorry. Not

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1 sent it.

2 **THE COURT:** Received it.

3 All right. It's admitted. 8568 is admitted.

4 (Trial Exhibit 8568 received in evidence.)

5 **BY MR. EVEN:**

6 **Q.** And you see that Mr. Chung says (as read):

7 "Good I heard about the Fortnite case from Jay."

8 That's Mr. Kim; right?

9 **A.** Yes.

10 **Q.** And it says (as read):

11 "It was done by the service team without my
12 knowledge."

13 Right?

14 **A.** Yes, I see that.

15 **Q.** That's essentially an apology: We didn't know. We
16 promised you something. We didn't know they were doing it
17 differently.

18 **A.** I don't know if it was an apology, but he said he was
19 looking into it.

20 **Q.** Okay, looking into it. And by "looking into it," you
21 understood Mr. Chung was promising to see if Samsung can
22 somehow reverse course on the Fortnite launch; correct?

23 **A.** No, I wouldn't agree with that.

24 **Q.** Well, you made sure that Samsung knew that Google was not
25 happy with what they did with Epic; correct?

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1 A. We were -- we were not happy, that's true.

2 Q. And you made sure Samsung knew that you're not happy;
3 correct?

4 A. I'm sure we conveyed that at some point, yes.

5 Q. And you made sure that Samsung would coordinate better
6 with you going forward about gaming; correct?

7 A. We did ask that of them, yes.

8 Q. And by "coordinate better," that means compete less;
9 right?

10 A. No, not necessarily.

11 Q. Not necessarily, I see.

12 You obtained assurances from Samsung that exclusive game
13 launches would not be part of their core strategy going
14 forward; correct?

15 A. I believe they told us that, yes.

16 Q. You received assurances from them to that effect; right?

17 A. Yes.

18 Q. So on the eve of the launch, you knew you had a contagion
19 risk on your hands. By the time the launch was over, you knew
20 you also had a Samsung problem on your hands; correct?

21 A. We had concerns about Samsung's strategy, yes.

22 Q. You had concerns about both the Samsung strategy and
23 contagion by other developers; correct?

24 A. Yes.

25 Q. And so let's turn to Exhibit 136 in your binder.

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1 We can publish page 1, please. This is already in
2 evidence.

3 This is a presentation from April 2019 that went to the
4 Business Council at Google; correct?

5 A. Yes.

6 Q. And that's a presentation you were at and you gave;
7 correct?

8 A. Yes. I gave at least a significant part of it, yes.

9 Q. All right. And the presentation talks about boosting top
10 game developer support. That's Project Hug; right?

11 A. Yes.

12 Q. And securing Play distribution on Samsung devices. That
13 is Project Banyan; correct?

14 A. Yes.

15 Q. If we go to Slide 4. Thank you.

16 Do you see that this says "Proposal Summary. Two programs
17 deployed in conjunction"; right?

18 A. Yes.

19 Q. And the talking points below say "Both programs are
20 needed"; right?

21 A. Yes.

22 Q. And the reason both are needed is by that point, you
23 didn't trust Samsung enough to promise you that gaming is not
24 core, so you wanted Hug as well to make sure that you get the
25 developers' side covered as well; right?

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1 **A.** We felt both initiatives were really important.

2 **Q.** Let's go to Slide 19.

3 This is about Project Banyan. You see that at the bottom
4 left it says "Jamie/Jim"?

5 **A.** Yes.

6 **Q.** Jamie is you?

7 **A.** Yes.

8 **Q.** And Jim would be Mr. Kolotouros?

9 **A.** Yes.

10 **Q.** All right. In the top right corner this slide states
11 "Exclusive Title/Content"?

12 **A.** Yes.

13 **Q.** And it talks about Fortnite; right?

14 **A.** Yes.

15 **Q.** And then there's one more that says (as read):

16 "Rumored that maybe they paid 40 million for
17 exclusive with Niantic."

18 Correct?

19 **A.** Yes.

20 **Q.** And Niantic is another mobile game company; correct?

21 **A.** Yes.

22 **Q.** If you go to the left-hand corner in the bottom blue box,
23 the slide says (as read):

24 "Represents large opportunity for Samsung and larger
25 risk for Google." Do you see that?

1 A. Yes.

2 Q. And as the arrow shows, the slide shows a \$930 million in
3 margin risk to the Google Play Store; correct?

4 A. I see that.

5 Q. And just to be clear, the 930 million risk to the Google
6 Play Store revenue was if exclusive titles launched on Android
7 via the Samsung Galaxy Store rather than on the Google Play
8 Store; correct?

9 A. I assume that's what this was referring to, yes.

10 Q. All right. Go to Slide 20 and you see that one of the
11 Google gets on this slide is (as read):

12 "Play hosts Galaxy Store games/apps, and provides
13 billing security and updates."

14 Right?

15 A. Yes.

16 Q. And with Google providing the billing for the combined
17 store, that means the stores would no longer compete on
18 commercial terms for developers; right?

19 A. Yes, with the exception of promotional opportunities.

20 Q. They would no longer compete on commercial terms for
21 developers; right?

22 A. Related to billing, yes.

23 Q. The fourth bullet next to "Financial gives" states "Up to
24 60 million annual payment for four years"; right?

25 A. Yes.

1 Q. Now if you go to page 44, that's a preliminary term
2 sheets, and the second bullet point under the "Google gets"
3 says (as read):

4 "Play and Galaxy Store are exclusive app stores on
5 default home screen."

6 Right?

7 A. Yes.

8 Q. So as part of Banyan you didn't want just to combine the
9 stores, you wanted also for them to be the only stores on the
10 home screen; right?

11 A. Yes. Well, I think this implies there's still two stores,
12 but those are the only two stores on the home screen.

13 Q. There's two storefronts but only one store that actually
14 delivers and bills and does anything; right?

15 A. Yes. For these apps, yes.

16 Q. If you go to page 45 and see that the heading says (as
17 read):

18 "To achieve our gets and help Samsung's goals, we
19 recommend a set of product and financial gives based on
20 guiding principles."

21 Do you see that?

22 A. Yes, I see that.

23 Q. And if you go to under "Financial Agreement," the first
24 bullet says (as read):

25 "Financial agreement to help Samsung's services

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1 revenue goal and justify deprioritizing the Galaxy Store."

2 Is that right?

3 **A.** Yes, I see that.

4 **Q.** And that's corporate speak for "We'll pay them not to
5 compete"; right? That's what deprioritize the Galaxy Store
6 means?

7 **A.** I think it would be deprioritizing most of their efforts
8 with the Galaxy Store, yes.

9 **Q.** It's a bribe; right?

10 **A.** No.

11 **Q.** The Business Council approved Project Banyan; right?

12 **A.** Yes.

13 **Q.** And Google delivered the Project Banyan proposal to
14 Samsung?

15 **A.** Yes.

16 **Q.** So let's go to Exhibit 783.

17 This is a series of e-mails between you, Mr. Lockheimer,
18 and others between May 28th, 2019, to May 30, 2019. Do you see
19 that?

20 **A.** Yes.

21 **MR. EVEN:** Your Honor, I'd like to move 783 into
22 evidence.

23 **MR. KRAVIS:** No objection.

24 **THE COURT:** It's admitted.

25 (Trial Exhibit 783 received in evidence.)

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1 **MR. EVEN:** Thank you.

2 **BY MR. EVEN:**

3 **Q.** The subject line of Exhibit 783 is "Samsung Store
4 Proposal"; right?

5 **A.** Yes.

6 **Q.** All right. If you go to page 3, and in the middle of the
7 page there's an e-mail from you on May 29, 2019, at 5:12. Do
8 you see that?

9 **A.** Yes, I see that.

10 **Q.** And in this e-mail you're reporting on a conversation that
11 you had with Patrick Chomet with Samsung?

12 **A.** Yes.

13 **Q.** And Mr. Chomet was a senior business executive?

14 **A.** Yes.

15 **Q.** And beginning at the third paragraph of the e-mail, you
16 write on the store proposal; right? And that refers to the
17 proposal Google made to Samsung in April 2019?

18 **A.** Yes.

19 **Q.** And you write to Mr. -- that Mr. Chomet asked if there was
20 a way to achieve our goals with a proposal but still
21 accommodate Samsung's desire to process transactions via
22 their -- meaning Samsung's -- payment system; right?

23 **A.** Yes.

24 **Q.** You write that -- you responded to Mr. Chomet that you put
25 a lot of thought into our proposal about how to align

1 incentives to have a single voice to the ecosystem and so that
2 the teams were not out competing with each other; right?

3 **A.** Yes.

4 **Q.** Now, in the next paragraph you wrote that Mr. Chomet said,
5 "So you're basically asking us to get out of the store
6 business." Do you see that?

7 **A.** I see that.

8 **Q.** That's not a crazy conclusion by him; right? That's what
9 you told him? "I don't want our teams to compete"; right?

10 **A.** Yes, in certain respects, but I didn't agree with his
11 conclusion here.

12 **Q.** Well, you gave a long-winded answer about your proposal.
13 You never said no; right?

14 **A.** That's correct.

15 **Q.** Turn to Exhibit 785 in your binder.

16 And that's a little time after and another counterproposal
17 has been made, and this is another series of e-mails between
18 you, Mr. Samat, and others at Google. This time from
19 June 2019. Do you see that?

20 **A.** (Witness examines document.) Yes, I see that.

21 **MR. EVEN:** Your Honor, I'd like to move to admit 785
22 into evidence.

23 **MR. KRAVIS:** No objection.

24 **THE COURT:** It's admitted.

25 (Trial Exhibit 785 received in evidence.)

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1 **MR. EVEN:** Thank you.

2 **BY MR. EVEN:**

3 **Q.** Halfway down the first page you sent an e-mail at
4 6:49 a.m. Do you see that?

5 **A.** Yes, I see that.

6 **Q.** And you again relay a conversation that you had with
7 Mr. Chomet at Samsung; correct?

8 **A.** Yes.

9 **Q.** And you state -- you discuss with Mr. Chomet Samsung's
10 counterproposal with respect to the Galaxy App Store; right?

11 **A.** Yes.

12 **Q.** And you reported to your colleagues that you again
13 explained to Mr. Chomet that Samsung's counterproposal was
14 unacceptable in part because it, quote, "created an incentive
15 dynamic where the store teams would be competing with each
16 other"; right?

17 **A.** Yes.

18 **Q.** And competition with the Galaxy Store was not acceptable
19 to Google under the Banyan project; right?

20 **A.** It wouldn't help us achieve our goals in that partnership.

21 **Q.** Your goals were not to compete; right? That was the goal?

22 **A.** Our goals were to do better against Apple collectively
23 with Samsung.

24 **Q.** Sir, your goals were not to compete; right? We just
25 looked at the Banyan presentation to BC. Do I need to go back

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1 to it to see whether there's Apple on those slides?

2 **A.** No.

3 **Q.** There isn't; right?

4 **A.** I don't know if there isn't.

5 **Q.** You haven't -- sitting here, you don't recall seeing
6 Apple -- big blue Apple on the slide; right?

7 **A.** I don't recall, but it might be in there.

8 **Q.** Okay. Turn to Exhibit 787 in your binder.

9 **A.** (Witness examines document.)

10 **Q.** And you see this is another e-mail chain between yourself,
11 Mr. Samat, Ms. Kochikar, and others dated June 19, 2019?

12 **A.** Yes, I see that.

13 **MR. EVEN:** And I believe 787 was previously admitted;
14 correct? No?

15 So I'd like to admit it at this point.

16 **MR. KRAVIS:** No objection.

17 **THE COURT:** It's admitted.

18 (Trial Exhibit 787 received in evidence.)

19 **BY MR. EVEN:**

20 **Q.** If you turn to page 5, do you see that this chain is
21 initiated by Mr. Samat who says, 3:12 p.m. (as read):

22 "Assuming we did not do a deal with Samsung for their
23 store, we should think about how to compete."

24 Do you see that?

25 **A.** Yes.

1 Q. And the second line of Mr. Samat's e-mail -- sorry.

2 The e-mail then continues if you go to the next page, and
3 then it says in bold (as read):

4 "Purnima, Jamie, Paul G, could you all pull together
5 a view of how we would effectively compete if there was no
6 deal to be done?"

7 Do you see that?

8 A. I see that.

9 Q. All right. So let's go to the June 11, 2019, e-mail from
10 you at 3:47 p.m. Still at page 5.

11 A. (Witness examines document.)

12 Q. Do you see you say that you will pull together thoughts on
13 this? (as read):

14 "Some of these are already in flight, such as
15 including Play protections in the new round of carrier RSA
16 for this very reason."

17 Do you see that?

18 A. I see that.

19 Q. In the third paragraph of this e-mail you write that (as
20 read):

21 "The one risk I continue to worry about is the
22 scenario in which Samsung comes out with a very public and
23 disruptive rev share model; i.e., it just decides that it
24 will only take 5 percent and use its app store for
25 purposes of building FOPs and user profiles and

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1 differentiating devices."

2 Do you see that?

3 **A.** Yes, I see that.

4 **Q.** And in the next sentence you say (as read):

5 "If Samsung wins the hearts and minds of developers
6 on this, it could create enormous pressure on us to
7 unblock their opportunity one way or the other."

8 Do you see that?

9 **A.** I see that.

10 **Q.** Move to page 3.

11 You see that Mr. Lockheimer sent an e-mail on June 12,
12 2019, at 10:23?

13 **A.** Yes.

14 **Q.** And Mr. Lockheimer says (as read):

15 "If we're willing to share Play revenue with carriers
16 as part of the recent RSA discussions, should we be
17 willing to do the same with Samsung on at least the same
18 terms."

19 Did I read that correctly?

20 **A.** Yes, I see that.

21 **Q.** All right. Moving up to page 2, you respond again on the
22 same e-mail chain. Do you see that at 10:41?

23 **A.** Yes.

24 **Q.** And you write (as read):

25 "I'd assume that a precondition for any sort of rev

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1 share arrangement with Samsung is that we'd achieve
2 structural alignment on business model."

3 Right?

4 **A.** I see that.

5 **Q.** And then you explain what "structural alignment" means,
6 and you say (as read):

7 "In other words, if we couldn't use rev share to
8 secure confidence that they won't drive down to 5 percent,
9 then we wouldn't do it."

10 Do you see that?

11 **A.** I see that.

12 **Q.** And "drive down to 5 percent," that's a reference to
13 driving down the fee Samsung charges developers for in-app
14 purchases from 30 percent to 5 percent; correct?

15 **A.** Yes, I believe that's what that refers to.

16 **THE COURT:** Okay. We'll take our afternoon break.
17 We'll be back a little bit after 2:15.

18 **THE CLERK:** All rise.

19 (Proceedings were heard out of the presence of the jury:)

20 **THE COURT:** You remain under oath so no communications
21 about your testimony.

22 **THE WITNESS:** Yes.

23 (Recess taken at 2:00 p.m.)

24 (Proceedings resumed at 2:17 p.m.)

25 (Proceedings were heard out of the presence of the jury:)

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1 **THE COURT:** Okay. What's the issue.

2 **MR. BORNSTEIN:** Thank you, Your Honor.

3 We had two quick issues I hope. One is we were hoping
4 after Mr. Rosenberg was finished, that we had a deposition. It
5 was the Spotify deposition. And we can -- there's a pending
6 sealing motion, as I understand. If Your Honor is not ready to
7 rule on that, we'll find something else to do after the
8 testimony today, but I just wanted to make sure we had things
9 queued up properly.

10 **THE COURT:** I have a criminal thing at 3:30, so we're
11 going to end at 3:20 today.

12 **MR. BORNSTEIN:** Okay. And then the other issue
13 relates to the testimony for tomorrow where there is an
14 evidentiary dispute between the parties, and I would cede the
15 floor to Ms. Moskowitz on that one.

16 **THE COURT:** Let's finish this and you can ask me at
17 3:20.

18 **MR. BORNSTEIN:** Sure. Thank you.

19 **THE COURT:** Thank you.

20 (Proceedings were heard in the presence of the jury:)

21 **THE COURT:** I have another matter I have to take up at
22 3:30. So we're going to end at 3:20 today. Okay?

23 All right. Go ahead.

24 **MR. EVEN:** Thank you.

25 \\

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1 **BY MR. EVEN:**

2 **Q.** Mr. Rosenberg, we left off on Exhibit 787. Do you recall
3 that?

4 **A.** Yes.

5 **Q.** And we saw you said any sort of rev share arrangement with
6 Samsung would only make sense and you would only do it if you
7 could achieve structural alignment on business model; right?

8 **A.** I see that it says that, yes.

9 **Q.** And you then said that (as read):

10 "In other words, if we couldn't use rev share to
11 secure confidence that they won't drive down 5 percent,
12 then we wouldn't do it."

13 Right?

14 **A.** I see that, yes.

15 **Q.** And, in other words, you wouldn't pay a rev share to
16 Samsung if you can't secure their agreement not to drive down
17 to 5 percent the rev share; correct?

18 **A.** I think the spirit of it was if we were going to invest
19 with them in this way, we wanted to have --

20 **Q.** Sir, it's a yes-or-no question.

21 **A.** -- alignment.

22 **Q.** You wrote here --

23 **THE COURT:** Please follow the reporter's instructions.

24 **MR. EVEN:** Sorry.

25 \\\

1 BY MR. EVEN:

2 Q. The simple language you wrote here is (as read):

3 "If we couldn't use rev share to secure confidence
4 that they won't drive down to 5 percent, then we wouldn't
5 do it."

6 That's what you said; right?

7 A. Yes.

8 Q. And then you said in parenthetical (as read):

9 "Subject to lots of legal advice on what secured
10 confidence can mean."

11 Right?

12 A. Yes.

13 Q. And that's because you understood that a written agreement
14 that says Samsung and Google agree not to lower the rev share
15 would be illegal; right?

16 A. Not necessarily, but I did want to make sure we did it
17 right.

18 Q. Samsung and Google did sign a rev share; correct?

19 A. No, I don't believe so.

20 Q. Sorry. They did sign an RSA; correct?

21 A. Yes.

22 Q. And, in fact, you signed that RSA for Google; correct?

23 A. Yes.

24 Q. And there is nothing written in the RSA that prohibits
25 Samsung Galaxy from competing against the Google Play Store;

1 correct?

2 A. Correct.

3 Q. And there's nothing written in the RSA that says Google
4 will not drive down the rev share to 5 percent; correct?

5 A. Correct.

6 Q. Now, despite that, Samsung has not had a single additional
7 exclusive deal with any major game developers since Epic;
8 correct?

9 A. I'm not sure.

10 Q. You're not aware sitting here today of any other major
11 deal that they struck with another gaming company; correct?

12 A. I'm not aware.

13 Q. And Samsung has not changed its revenue share to 5 percent
14 or anywhere near that; right?

15 A. I don't know. I don't follow it that closely.

16 Q. Well, maybe Google just got lucky, or maybe there's a
17 handshake agreement that we just don't know?

18 A. I'm sorry. I'm not sure I understand the question.

19 Q. If there's a handshake agreement, we wouldn't know about
20 it; right?

21 A. If there's a handshake agreement?

22 Q. Yes. We wouldn't see it in documents.

23 A. Correct.

24 Q. Alongside Hug and Banyan, you also engaged in something
25 called a Project Reevaluate the Play Business Model; correct?

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1 **A.** I was less involved in that in its later stages but was in
2 discussions earlier on.

3 **Q.** Okay. So if you turn to Exhibit 708 in your exhibit
4 binder.

5 **A.** (Witness examines document.)

6 **Q.** This is a document that includes comments from you and
7 Mr. Samat about this complete evaluation. Do you see that? It
8 identifies the problem on page 2. You'll see exchanges of
9 comments.

10 **A.** Yes, I see that.

11 **MR. EVEN:** Your Honor, at this point I'd like to admit
12 708 into evidence.

13 **MR. KRAVIS:** No objection.

14 **THE COURT:** It is admitted.

15 (Trial Exhibit 708 received in evidence.)

16 **BY MR. EVEN:**

17 **Q.** And you see on the first point -- on the first page you
18 see it says (as read):

19 "The problem is value delivered to developers by
20 Google Play is not aligned with how much developers pay."

21 **A.** I see that.

22 **Q.** And if you go all the way to the bottom of this, the last
23 bullet point says (as read):

24 "The pricing 30 percent rev share on in-app purchases
25 feels arbitrary and high to developers."

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1 Right?

2 A. I see that.

3 Q. You're familiar with Google Chats; correct?

4 A. Yes.

5 Q. And when you were a full-time employee at Google, you
6 would use Google Chat to communicate with your coworkers every
7 day; right?

8 A. Yes.

9 Q. And, for example, you've seen that you had e-mails that
10 suggest you had conversations with Mr. Kolotouros about
11 negotiations with Samsung over Chats; correct?

12 A. I remember seeing one e-mail about that, yes.

13 Q. And you received a litigation hold for this case; correct?

14 A. Yes.

15 Q. And you did nothing to preserve your Google Chats for
16 purposes of this case; correct?

17 A. That's correct.

18 MR. EVEN: Pass the witness.

19 THE COURT: Okay. Go ahead.

20 MR. KRAVIS: May I approach the witness?

21 THE COURT: All right.

22 CROSS-EXAMINATION

23 BY MR. KRAVIS:

24 Q. Good afternoon, Mr. Rosenberg.

25 A. Good afternoon.

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1 **JUROR NO. 7:** Can I get a pen?

2 **THE COURT:** Oh. What about paper? Do you need a
3 restock?

4 (Pause in proceedings.)

5 **THE COURT:** Go ahead.

6 **MR. KRAVIS:** Thank you, Your Honor.

7 **BY MR. KRAVIS:**

8 **Q.** Good afternoon, Mr. Rosenberg.

9 **A.** Good afternoon.

10 **Q.** Let me just start here. Did Project Banyan result in any
11 agreement between Google and Samsung regarding the
12 Samsung Galaxy Store?

13 **A.** No, it did not.

14 **Q.** To this day do Samsung phones come with the Galaxy Store
15 preinstalled on them?

16 **A.** Yes, they do.

17 **Q.** And to this day where does the Galaxy Store sit on a
18 Samsung phone?

19 **A.** On the home screen.

20 **Q.** All right. Let's go back through some of the details.
21 Project Banyan involved a phone manufacturer called
22 Samsung; right?

23 **A.** Yes.

24 **Q.** And Samsung uses the Android operating system on its
25 phones?

1 **A.** Yes.

2 **Q.** So let me ask you about the relationship between Google
3 and Samsung generally.

4 Are there areas where Google and Samsung compete when it
5 comes to the services they offer?

6 **A.** Yes, there are.

7 **Q.** Like what?

8 **A.** Like the app stores, of course. Also web browsers.
9 Samsung has a web browser. Google has a web browser. Voice
10 assistance. Google has Google Assistant. Samsung has its
11 Bixby voice assistant. So there are several areas.

12 **Q.** And when it comes to devices, do Google and Samsung
13 compete on devices?

14 **A.** Yes.

15 **Q.** And what do you mean by that?

16 **A.** Well, Samsung, as we know, has the Galaxy smartphone
17 devices and Google has the pixel-branded devices.

18 **Q.** Now, are there also areas where Google and Samsung
19 collaborate?

20 **A.** Yes.

21 **Q.** What would be one example of that?

22 **A.** Well, we collaborate very deeply because we develop the
23 Android operating system, and they make phones based on the
24 operating system.

25 But also from time to time we collaborate on services.

1 One recent example is we decided to align on the text messaging
2 app that comes on all Samsung devices using Google's app.
3 Previously Google and Samsung had separate text messaging apps,
4 and we really focused on improving text messaging on Samsung
5 devices because iMessage was so strong on iPhones and the
6 green bubble/blue bubble issue, which I know a lot of people
7 are familiar with, we really wanted to work hard with Samsung
8 to counteract that and upgrade the messaging experience on
9 Samsung devices.

10 **Q.** Now, I think we saw from some of the documents that these
11 conversations with Samsung began around early 2019. Does that
12 sound about right?

13 **A.** Yes, I think that's right.

14 **Q.** And what was your role in those conversations with Samsung
15 at that time?

16 **A.** Well, in early 2019 I was managing the partnership team
17 that worked day to day with Samsung.

18 **Q.** Now, based on those initial conversations, what was the
19 issue that Samsung and Google were trying to address with
20 Project Banyan?

21 **A.** We felt we were very vulnerable collectively on gaming.
22 Apple had become very strong. iPhones had been -- become
23 very strong on gaming. A number of top game titles had
24 launched first on iPhones and also worked better on
25 iPhones, and we were talking with Samsung about how across the

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1 whole chain we were not joined up together to have a strong
2 response to iPhones with the gaming experience on Samsung's
3 devices.

4 **Q.** And from Google's perspective, why was it important to
5 focus on the gaming experience on Android phones as compared
6 with iPhones?

7 **A.** It was one of the top use cases on a smartphone, a use
8 case that tended to attract premium users, tended to be very
9 influential in the decision of users in terms of what phone to
10 buy. And so oftentimes we would talk with Samsung about for
11 certain use cases on devices, how could we collaborate better
12 to make sure we really had a strong response to iPhones.

13 **Q.** Now I'd like to -- if you could look in your binder,
14 please, to trial Exhibit 6133.

15 Do you see that?

16 **A.** Yes.

17 **Q.** Mr. Rosenberg, is this an e-mail chain that you
18 participated in in February of 2019 concerning the project that
19 we are talking about here?

20 **A.** Yes.

21 **MR. KRAVIS:** At this time I move Exhibit 6133 into
22 evidence.

23 **MR. EVEN:** Your Honor, we understand that Google does
24 not intend to admit this into evidence for hearsay purposes.
25 Subject to an instruction on that, we have no objection.

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1 **THE COURT:** What are you saying?

2 **MR. EVEN:** I'm sorry?

3 **THE COURT:** All right. What's the objection?

4 **MR. EVEN:** The objection is hearsay.

5 **THE COURT:** Hearsay?

6 **MR. EVEN:** Yes.

7 **THE COURT:** Why don't you lay a foundation.

8 **MR. KRAVIS:** Okay.

9 **BY MR. KRAVIS:**

10 **Q.** Mr. Rosenberg, before we publish the exhibit, I want to
11 direct your attention halfway down the first page.

12 Do you see there's an e-mail on Thursday, February 7th,
13 2019, at 6:50 a.m.?

14 **A.** Yes, I see that.

15 **Q.** Did you write that e-mail?

16 **A.** Yes.

17 **Q.** Did you send that e-mail to your colleagues at Google?

18 **A.** Yes.

19 **Q.** Does that e-mail that you wrote, does that e-mail concern
20 your conversations with Samsung about the project that we are
21 discussing here?

22 **A.** Yes, it does.

23 **Q.** All right.

24 **MR. KRAVIS:** At this time we'd move Exhibit 6133 into
25 evidence.

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1 **THE COURT:** Go ahead. It's admitted. Go ahead.

2 (Trial Exhibit 6133 received in evidence.)

3 **MR. KRAVIS:** And can we publish that, please? Thank
4 you.

5 **BY MR. KRAVIS:**

6 **Q.** Now, Mr. Rosenberg, I'd like to direct your attention to
7 the first paragraph of that e-mail. You write (as read):

8 "Jim and I met with Jay Kim from Samsung yesterday
9 with the primary agenda item being how we can collaborate
10 better on games/app store stuff."

11 Do you see that?

12 **A.** Yes, I see that.

13 **Q.** And the Jay Kim that you're referring to is someone who
14 works at Samsung?

15 **A.** Yes.

16 **Q.** And Jim is Jim Kolotouros?

17 **A.** Yes.

18 **Q.** And the games/app store stuff, is that the project that we
19 have been talking about here?

20 **A.** Yes.

21 **Q.** And the next sentence reads (as read):

22 "This was direct follow-up from the strong message we
23 delivered to Samsung execs at GDC."

24 Do you see that?

25 **A.** Yes.

1 Q. What is GDC?

2 A. That's the Game Developer Conference.

3 Q. And what was the strong message that you delivered to the
4 Samsung executives at the Game Developer Conference?

5 A. As I recall, it was that collectively we were falling
6 behind on gaming, falling behind IOS.

7 Q. I'd like to direct your attention to the fourth paragraph.
8 The fourth paragraph you write (as read):

9 "Here is what Jay said about Samsung's goals."

10 Do you see that?

11 A. Yes, I see that.

12 Q. And is this portion of the e-mail recounting what Jay Kim
13 from Samsung told you about Samsung's goals for this project?

14 A. Yes.

15 Q. Can you read the first bullet there, please?

16 A. It says (as read):

17 "Primary motivation for investing in games is to
18 compete with Apple."

19 Q. And what did you understand Mr. Kim from Samsung to mean
20 when he told you that Samsung's primary motivation for
21 investing in games is to compete with Apple?

22 A. My understanding is that this was early on in the
23 discussions about how we collaborate, but that that was the
24 main objective we needed to be able to achieve together.

25 Q. Now I want to direct your attention to the next paragraph

1 down. You see it says (as read):

2 "They have four areas of tactical focus against those
3 goals."

4 Do you see that?

5 **A.** Yes.

6 **Q.** Is the "they" referring to Samsung there?

7 **A.** Yes.

8 **Q.** And the first --

9 **MR. EVEN:** Your Honor, this is now hearsay within
10 hearsay, I believe.

11 **THE COURT:** Let's see how it goes.

12 Go ahead.

13 **BY MR. KRAVIS:**

14 **Q.** Can you read for us, please, the first of the four areas
15 of tactical focus that Jay from Samsung described for you?

16 **A.** Yes. It says (as read):

17 "Deep dev tech collaboration with devs to get top
18 games working well on Samsung devices."

19 **Q.** What is your understanding of what that means, "deep dev
20 tech collaboration with devs"?

21 **A.** It means jointly with Samsung, our technical teams on both
22 sides work closely with top game developers in addition to our
23 own internal engineering teams to help get those games working
24 really well on Samsung devices.

25 **Q.** And how does that deep dev tech collaboration with devs

1 that you described address the motivation of investing in games
2 to compete with Apple?

3 **A.** Well, as I said, a lot of games at the time weren't
4 running as well on Android devices for technical reasons. Some
5 of them like Fortnite, for example, you know, came later to
6 Android, other games might come later to Android or might not
7 run as well on Android. So that was what that was meant to
8 address.

9 **Q.** All right. I'd like to move now to the deck that you were
10 shown during my colleague's examination.

11 Could we have Exhibit 136, please? I believe this has
12 already been admitted, so we can publish it.

13 Mr. Rosenberg, do you remember being asked some questions
14 during my colleague's examination about this slide deck?

15 **A.** Yes.

16 **Q.** And I believe you testified that this slide deck addressed
17 in part the collaboration with -- or the proposed collaboration
18 with Samsung that we've been discussing here. Do I have that
19 right?

20 **A.** Yes, that's right.

21 **Q.** And do you see on the first page the date of this deck is
22 April 9th of 2019?

23 **A.** Yes.

24 **Q.** So this would have been, like, two months after the e-mail
25 that we just saw about your conversation with Jay from Samsung.

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1 Do I have the timing right?

2 A. Yes, that's right.

3 Q. All right. I'd like to direct your attention to page 3 of
4 the deck.

5 And, Mr. Rosenberg, do you remember my colleague was
6 asking you about this deck, and you don't see Apple on this
7 slide, you don't see Apple on that slide? Do you remember
8 those questions?

9 A. Yes, I do.

10 Q. Mr. Rosenberg, do you see a reference to Apple on this
11 slide?

12 A. Yes, I do.

13 Q. Where do you see it?

14 A. The lower left in red it says "Android to IOS churn."

15 Q. Okay. Let's take that piece by piece.

16 You're talking about impact on the bottom left?

17 A. Yes.

18 Q. Let's start with what is IOS?

19 A. IOS is the operating system that runs on iPhones.

20 Q. And the phrase "Android to IOS churn," do you have an
21 understanding as to what that means?

22 A. What that means is when -- the way we would use that term
23 is when an Android user -- a user who had an Android phone
24 would decide to switch and use an iPhone instead.

25 Q. Now, the bullet reads (as read):

1 "Android to IOS churn due to fractured app
2 distribution and security risks on Android."

3 Do you see that?

4 **A.** Yes, I see that.

5 **Q.** In this context, what is -- do you have an understanding,
6 what does "fractured app distribution" mean?

7 **A.** What that means is because there were multiple ways to get
8 an app on Android in contrast to iPhones where there's only
9 one way to get an app through the app store, if it was too hard
10 for users to know where to go for certain apps, then that might
11 become a reason they get frustrated with the experience on the
12 platform and decide to get an iPhone instead.

13 **Q.** Now I just want to be clear about this. The first bullet
14 above "Android to IOS churn" says "Play margin loss." Do you
15 see that?

16 **A.** Yes, I see that.

17 **Q.** And "Play margin loss" refers to like the Play Store
18 making less money; right?

19 **A.** Yes.

20 **Q.** So in addition to addressing the issue that you were
21 describing of Android to IOS churn, fair to say that one of the
22 impacts that is also being addressed here is an impact to the
23 Play Store's revenues?

24 **A.** Yes.

25 **Q.** Okay. There's one other thing I want to ask you about on

1 this deck.

2 Could we take a look at Slide 19, please?

3 Now, I think you were asked about this slide during my
4 colleague's examination as well. Do you see at the top it says
5 "Context"?

6 **A.** Yes.

7 **Q.** And then there is a blue box that says "Samsung pursuing
8 gaming on Galaxy Store." Do you see that?

9 **A.** Yes.

10 **Q.** And then all the way over to the right it says "Exclusive
11 Titles/Content." Do you see that?

12 **A.** Yes.

13 **Q.** And below that, is that the logo for the game Fortnite?

14 **A.** Yes.

15 **Q.** And then below that it says "Rumor paid 40 million for
16 exclusive Niantic content"?

17 **A.** Yes.

18 **Q.** Mr. Rosenberg, do you have an understanding of what
19 "Exclusive Titles/Content" means in this context?

20 **A.** I think in this context it means titles that would only be
21 available on Samsung devices.

22 **Q.** And was Samsung -- was Samsung's pursuit of exclusive
23 titles for the Galaxy Store one of the issues that Google was
24 hoping to address with Project Banyan?

25 **A.** Yes, it was.

1 Q. And what was Google's concern exactly with Samsung
2 pursuing exclusive gaming titles for the Samsung Galaxy Store?

3 A. Well, we believed that with Google Play, we thought it was
4 very important that we had a store that had all of the content
5 that was the authoritative source for where to get anything
6 that you might need on your Android device reliably. Because
7 that's what allowed Android to compare most favorably to
8 iPhones, is to have that broad source of content in one place.
9 That's not to say it couldn't have been in other places.

10 And so we felt that if other individual app stores started
11 to have exclusive content that wasn't available to Google Play,
12 then it would undermine that goal that we had with Google Play.
13 It would confuse users and ultimately they might get frustrated
14 and buy an iPhone. And, of course, there was economic impact
15 to Google Play as well.

16 Q. And so just to address that comparison with iPhones, am I
17 right, that the iPhone has just one app store on it? Is that
18 right?

19 A. That's right.

20 Q. So there are -- there's one place to look on the iPhone
21 for apps?

22 A. That's right.

23 Q. All right. Now, a few months after this deck, did Google
24 receive a term sheet from Samsung?

25 A. Yes.

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1 Q. I'd like to show you what has been entered into evidence
2 as Trial Exhibit 652.

3 Mr. Rosenberg, is this the term sheet that Google received
4 from Samsung in June of 2019?

5 A. Yes.

6 Q. I direct your attention to the column on the right there.
7 Do you see it reads "Samsung Position"?

8 A. Yes.

9 Q. And then under where it says "Samsung Position," do you
10 see the words "Prevent unnecessary competition on store"? Do
11 you see that?

12 A. Yes.

13 Q. Whose words are those? Are those Google's words or are
14 those Samsung's words?

15 A. Those are Samsung words.

16 Q. And expressed on the term sheet here, is that Google's
17 position or is that described as Samsung's position?

18 A. That was Samsung's position.

19 Q. And am I right that shortly after you received this term
20 sheet, Google terminated the negotiations with Samsung?

21 A. Yes, that's right.

22 Q. All right. So I'd like to show you what has been entered
23 into evidence as Trial Exhibit 6066.

24 Mr. Rosenberg, is this an e-mail that you wrote to some of
25 your colleagues at Google on July 12, 2019?

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1 A. Yes, it is.

2 Q. And can we call out the first paragraph, please? Just the
3 first paragraph.

4 Mr. Rosenberg, can you read for us, please, just the first
5 two sentences of the e-mail you wrote on July 12th, 2019?

6 A. It says (as read):

7 "I wanted to convey an update on Project Banyan. We
8 are halting work on this and not proceeding with the
9 related work streams involving our respective app stores."

10 Q. Was this the end of Project Banyan?

11 A. Yes, it was.

12 Q. All right. Now, Epic's counsel asked you some questions
13 about a revenue sharing agreement that Google entered into with
14 Samsung after this time in 2020. Do you remember that?

15 A. Yes.

16 Q. Does the revenue sharing agreement prohibit Samsung from
17 putting the Galaxy Store on its phones?

18 A. No, it does not.

19 Q. And does the Revenue Share Agreement prohibit Samsung from
20 putting the Galaxy Store on the home screen of its phones?

21 A. No, it does not.

22 Q. And is the Galaxy Store on the home screen of Samsung
23 phones today?

24 A. Yes, it is.

25 Q. All right. I'd like to move on to a different topic and

1 ask you about the negotiations with Epic.

2 I think you were asked some questions during my
3 colleague's examination about a proposal that Google put
4 together for Epic to bring Fortnite to Play in the summer of
5 2018. Do you remember that?

6 **A.** Yes.

7 **Q.** Okay. Would this proposal -- was this a bribe to Epic?

8 **A.** No.

9 **Q.** Okay. So if it wasn't a bribe, then why did Google put
10 together the proposal?

11 **A.** We really wanted Fortnite in the Play Store. It was a
12 fantastic game. It had an amazing user community. We thought
13 it would be great for Play.

14 **Q.** I'd like to show you this slide deck that you were asked
15 about during my colleague's examination, Exhibit 805. It
16 should be entered into evidence.

17 Is this the Business Council deal review for the proposal
18 to Epic that we were talking about?

19 **A.** Yes.

20 **Q.** All right. I'd like to direct your attention, please, to
21 Slide 2, and I'd like to start at the top of the slide.

22 Do you see it says (as read):

23 "Objective: Partner with Epic to secure Fortnite's
24 launch on Play and help them achieve their goals in the
25 gaming industry"?

1 Did I read that correctly?

2 **A.** Yes.

3 **Q.** I think you were talking a moment ago about why partnering
4 with Epic to secure Fortnite's launch on Play was one of the
5 goals here; right?

6 **A.** Yes.

7 **Q.** So let me ask you about the second part. Why was it part
8 of Google's objective to help Epic achieve their goals in the
9 gaming industry?

10 **A.** Well, one of the things this refers to is, in addition to
11 being the developer of Fortnite, Epic also was the developer of
12 the Unreal Game Engine, which was used in other games, and we
13 realized that there was more that we could do to be working
14 well with Epic on that side as well; and so we thought of a
15 broad proposal that would help them both with the success of
16 Fortnite on Play but also with their efforts with the Unreal
17 Game Engine.

18 **Q.** I want to show you a slide that talks about the
19 Unreal Engine portion of the proposal in a moment, but before I
20 do that, I want to just ask you about one more thing on this
21 slide.

22 I think my colleague during his examination asked you
23 about the second bullet under the third heading that reads (as
24 read):

25 "Downstream impact of 550 million up to 3.6 billion

1 potential revenue loss if broad contagion to other."

2 Do you see that, Mr. Rosenberg?

3 **A.** I see that.

4 **Q.** Now, in this particular context, what do you understand
5 the word "contagion" to be referring to here when it says
6 "contagion to other developers"?

7 **A.** Well, if we -- we were worried about other developers
8 deciding to launch their game titles also outside of Play.

9 **Q.** And why were you concerned about that?

10 **A.** It's like what I said before. Play -- we really felt
11 strongly about Play having all the content. We wanted to have
12 all the great titles, be able to represent that our store was
13 comprehensive, especially compared to the app store on IOS
14 devices.

15 **Q.** You wanted to have the games?

16 **A.** Yes, we wanted to have the games.

17 **Q.** All right. Let me direct your attention now to Slide 5.

18 You mentioned, I think, in your last answer that having
19 great titles in the Play Store was important to Google in part
20 because of its ability to compete with the app store on IOS or
21 the Apple App Store. Did I hear that right?

22 **A.** Yes.

23 **Q.** And do you see that sentiment reflected on this slide?

24 **A.** (Witness examines document.) Yes. I think it would be
25 the second -- the second headline on the right-hand side.

1 Q. The "Shifting market perception for Play"?

2 A. Yes.

3 Q. And what do you understand that to refer to?

4 A. It's like I was saying, which is we wanted Play to be seen
5 as this comprehensive and best place to find any app or game
6 that you wanted to get for your Android device.

7 Q. And I'll direct you to the next one down as well. It says
8 "Android brand impact." Do you see that?

9 A. Yes.

10 Q. And then it says (as read):

11 "Inconsistent access to AAA games increases
12 perception gap versus IOS ecosystem."

13 Do you see that?

14 A. Yes, I see that.

15 Q. Just remind us, what does "IOS ecosystem" refer to?

16 A. That's the ecosystem of iPhone and iPhone users.

17 Q. And so in this context, what do you understand "increases
18 perception gap versus IOS ecosystem" to refer to?

19 A. It refers to the point I was making before where if there
20 was a perception that Android wasn't as good for gaming as
21 iPhones, then that user base would be more attracted to
22 iPhones.

23 Q. Now, you talked, I think, a moment ago about another
24 potential benefit to Google and the Play Store from this deal,
25 and that was a deeper collaboration with Epic Games on

1 something called Unreal Engine. Did I hear that right?

2 **A.** Yes.

3 **Q.** And just briefly for the jury, what is Unreal Engine?

4 **A.** Well, I'll probably not get the technical definition
5 right, but it is an engine. It's a piece of software that
6 developers who are building games can add to their games that
7 includes a number of things that are, I guess, features of
8 games or capabilities of games that then developers can build
9 with.

10 **Q.** All right. So let me direct your attention, last one on
11 this, to Slide Number 10, please.

12 And I'd like to focus you in on the column on the far
13 right, "Deeper partnerships with Unreal Engine." Do you see
14 that?

15 **A.** Yes, I see that.

16 **Q.** And so was a deeper partnership with Epic on Unreal Engine
17 part of the value that Google was hoping to secure with the
18 proposal?

19 **A.** Yes.

20 **Q.** And so the numbers my colleague showed you about the
21 payments to -- the proposed payments to Epic, and so on and so
22 forth, did that all include the benefits that Google was hoping
23 to get from a partnership on Unreal Engine in addition to the
24 Fortnite stuff?

25 **A.** Yes.

1 Q. Mr. Rosenberg, before we leave the topic of Epic, I'd like
2 to direct your attention to an e-mail that my colleague showed
3 you. It is Exhibit 761, which has been entered into evidence.

4 And I'd like to direct your attention to page 3 of the
5 e-mail chain. Starting on the -- at the bottom of the page, do
6 you see the e-mail from Mr. Samat at 8:50 a.m. on August 9th,
7 2018?

8 A. Yes, I see that.

9 Q. And I think my colleague asked you about the paragraph
10 that reads (as read):

11 "Main point. Something is wrong."

12 Do you see that?

13 A. Yes.

14 Q. What is your understanding of the concern that Mr. Samat
15 was expressing in this e-mail shortly after the launch of
16 Fortnite?

17 A. My understanding of the concern, and I'm not familiar with
18 all the technical details, is that our understanding of the
19 behavior here for an app that would install other apps if it
20 wasn't preinstalled on the phone with the permissions to
21 install other apps would have to ask the user for that
22 permission, and there was something about the collaboration
23 between Epic and Samsung where this app wasn't asking the user
24 for the permission.

25 Q. So is this like a -- this is like a security concern?

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1 A. That's my understanding of what Sameer was raising here.

2 Q. Do you recall whether this security concern turned out to
3 be justified?

4 A. I do think there was -- I do recall a security incident,
5 yes.

6 Q. Let's stick with the same e-mail and turn to page 2. So a
7 little further up.

8 Do you see an e-mail from Monday, August 13th, at
9 8:03 a.m. from Edward Cunningham? It's about halfway down the
10 page.

11 A. (Witness examines document.) Yes.

12 Q. So this is about four days after the e-mail that my
13 colleague showed you from Mr. Samat; correct?

14 A. Yes.

15 Q. And Mr. Cunningham writes (as read):

16 "I took a deeper look on Friday and discovered a
17 vulnerability in the Fortnite installer and Galaxy apps
18 Private Installer API, which allows a malicious app to
19 install a fake version of Fortnite with arbitrary
20 permissions auto granted."

21 Did I read that correctly?

22 A. Yes.

23 Q. And is your understanding that Mr. Cunningham was
24 describing a security vulnerability?

25 A. Yes.

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1 Q. Fair to say that Mr. Cunningham is sort of the one who
2 knows the most about this?

3 A. Yes, for sure.

4 Q. All right. Maybe we'll hear from him later.

5 The text message that my colleague showed you,
6 Exhibit 8564, it wasn't disclosed to us so I don't have an
7 electronic copy to show you, but you should have the hard copy
8 in the binder there. This is the text message from -- the text
9 message that you sent to the folks at Samsung. Do you remember
10 that?

11 A. Yes.

12 Q. Is the -- when you wrote that you were very concerned in
13 this message, is the concern that you were describing the same
14 concern that we were talking about earlier, the security
15 issues?

16 A. Yes.

17 Q. All right. Mr. Rosenberg, I'd like to turn to a different
18 topic and ask you a few questions about Amazon; and to do that,
19 I'd like to show you again what has been marked and entered
20 into evidence as Exhibit 682.

21 Mr. Rosenberg, you remember this was the slide deck that
22 my colleague showed you called "Amazon competitor deep dive"
23 from April of 2017?

24 A. Yes.

25 Q. And, Mr. Rosenberg, at this time did you consider the

1 Amazon App Store to be a competing app store competitor to the
2 Google Play Store?

3 **A.** Yes.

4 **Q.** All right. I want to direct your attention now to Slide
5 Number 14.

6 Now, Mr. Rosenberg, am I right that the title of this
7 slide reads "Need to focus on making Play user and developer
8 loyalty a rational and attractive proposition"? Did I read
9 that correctly?

10 **A.** Yes.

11 **Q.** And then do you see there sort of two blue boxes there?
12 There's one that says "Users" and then there's one that says
13 "Developers"?

14 **A.** Yes.

15 **Q.** And next the "Users," if you look a few columns over, it
16 says "What we worry about." Do you see that?

17 **A.** Yes, I see that.

18 **Q.** It says (as read):

19 "Amazon can grow its reach to 20 to 30 percent of
20 Play users."

21 Right?

22 **A.** Yes.

23 **Q.** And so on the far right where "Under our goals," does it
24 describe what the Play Store is planning to do in response to
25 that worry?

1 A. Yes, I see that.

2 Q. And what does it say?

3 A. It says, I'll read it here (as read):

4 "Make it attractive for users to stay on Play."

5 Q. So is this slide expressing the idea that the Play Store
6 will compete with the Amazon App Store by making it attractive
7 for users to stay on Play?

8 A. Yes, it is.

9 Q. And then you see another blue box down there on the
10 left-hand side that says "Developers." Do you see that?

11 A. Yes, I see that.

12 Q. And under what we worry about reads (as read):

13 "Amazon can attract 40-plus of top 100 Play apps or
14 increase share of Android spend to 20 percent."

15 Do you see that?

16 A. Yes, I see that.

17 Q. And over in the far right under "Our Goals," what is
18 written there when it comes to developers?

19 A. It says (as read):

20 "Make it more compelling for developers to focus on
21 Play."

22 Q. So is part of what this slide is expressing that the
23 Play Store will compete with the Amazon App Store by making it
24 more compelling for developers to focus on Play?

25 THE COURT: Let's ask questions that aren't leading

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1 him by the nose. Can you try that again, please?

2 **MR. KRAVIS:** Yeah.

3 **BY MR. KRAVIS:**

4 **Q.** What is your understanding of -- what is your
5 understanding of the sentence "Make it more compelling for
6 developers to focus on Play under our goals"? What's your
7 understanding?

8 **A.** We had to make sure developers continued to be happy about
9 their experience on Play and find it rewarding.

10 **Q.** Mr. Rosenberg, you were shown a -- excuse me.

11 You were asked some questions during my colleague's
12 examination about an exception in an earlier version of the
13 billing policy. Do you remember that?

14 **A.** Yes.

15 **Q.** I think it's sometimes referred to as the digital goods
16 exception?

17 **A.** Yes.

18 **MR. KRAVIS:** Can we pull up -- I think this was
19 reflected in Exhibit 8029, which has been entered into
20 evidence.

21 (Pause in proceedings.)

22 **MR. KRAVIS:** Right.

23 **BY MR. KRAVIS:**

24 **Q.** And if we could turn to page 4 of this exhibit where it
25 says "Paid and free apps" and then there's a paragraph under

1 there. Do you see where I'm looking?

2 A. Yes.

3 Q. Can we pull out a little more under "Paid and free apps"?

4 A. Yes, I see that.

5 Q. Okay. And I think the exception that you were directed to
6 appears at the very bottom of the pullout here saying

7 "Developer" -- (as read):

8 "The exception is for payment for digital content or
9 goods that may be consumed outside of the app itself;
10 e.g., buying songs that can be played on other music
11 players."

12 Do you see that?

13 A. Yes, I see that.

14 Q. And just to make sure we're all on the same page here, am
15 I right this was an exception that appeared in an earlier
16 version of the payments policy? Right?

17 A. Yes.

18 Q. And so "exception" means that these purchases would not be
19 subject to the requirement to use Google Play Billing for the
20 purchase? Is that what "exception" means here?

21 A. That's right.

22 Q. All right. Now, I think in response to my colleague's
23 questions you testified that around this time period some
24 developers like Netflix and Hulu invoked this exception with
25 respect to their payments in the Play Store. Did I hear that

1 right?

2 A. Yes.

3 Q. And I think you said it was unclear -- your view was it
4 was unclear at that time whether this exception applied --

5 A. Yes.

6 Q. -- to those kinds of apps?

7 Can you just explain what you meant by that?

8 A. Yes. Well, this was created -- it was actually created
9 before my time when there were things like MP3 downloads that
10 you might then load into a separate MP3 player, or I think the
11 Kindle example is a good one where you might buy it in the
12 Android app but then read it -- read it on the Kindle.

13 The industry was evolving and these streaming use cases
14 were evolving after this was written, and this -- it wasn't
15 clear to these developers -- it wasn't clear to these
16 developers where they stood in relation to this policy.

17 Q. And the developers that we're talking about, I think you
18 mentioned streaming services like Netflix and Hulu?

19 A. Yes.

20 Q. And so when this issue arose around the application of
21 this exception, what did the Play Store do with respect to
22 those developers?

23 A. We tried to convince them to use Play billing. And for
24 us, I mean, we really wanted the apps, we really wanted the
25 content, and so it wasn't our first choice to enforce. We

1 wanted to work with them and try to find ways to encourage them
2 to use Play's billing system.

3 **Q.** And why was that, Mr. Rosenberg? Why was it that the
4 Play Store wanted to work with the developers on this issue?

5 **A.** We value developers. We value their participation in the
6 ecosystem. We want to be responsive to them and listen to
7 them.

8 **Q.** By the way, to your knowledge during this time period, did
9 the Apple App Store have this exception for digital content
10 consumed outside the app?

11 **A.** No, it did not.

12 **Q.** Okay. I think you mentioned that around this time Google
13 also -- the Google Play Store also implemented a program called
14 the Living Room Accelerator Program or LRAP. Did I hear that
15 correctly?

16 **A.** Yes.

17 **Q.** What is the Living Room Accelerator Program?

18 **A.** That was a program that was specifically focused on video
19 streaming apps. We were -- one of the things we were paying
20 attention to was the emergence of TV streaming devices, and we
21 have a version of the Android OS we called Android TV that we
22 were working with TV manufacturers to build into TV sets, and
23 we wanted to make sure we had great versions of these apps on
24 those devices. Apple was a little bit ahead of us with the
25 Apple TV device. We wanted to be responsive.

1 And so the Living Room Accelerator Program was a broad
2 program where if the developer invested in bringing a good app
3 to Android TV or incorporating our Cast protocol, which allows
4 you to start a video on your phone and then have it show up on
5 your TV, and invest with us in making the living room
6 experience better, then we would offer better economics to them
7 for their distribution through Play.

8 **Q.** And when you say "better economics through their
9 distribution through Play," you're referring to a lower service
10 fee?

11 **A.** Yes.

12 **Q.** So this was a program that gave a lower service fee to
13 some developers building apps for streaming services?

14 **A.** That's right.

15 **Q.** All right. I'd like to continuing to talk with you about
16 the service fee.

17 My colleague showed you Exhibit -- actually, let me move
18 on to a different topic.

19 Let me show you another exhibit. Could you turn in your
20 binder, please, to Exhibit 5956?

21 Mr. Rosenberg, do you recognize Exhibit 5956?

22 **A.** Yes.

23 **Q.** What is Exhibit 5956?

24 **A.** This is an e-mail discussion between Hiroshi Lockheimer,
25 who was my boss at the time -- actually, he wasn't my boss at

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1 the time but he was a peer of mine, senior level on Android,
2 where he was concerned that Apple was offering better terms to
3 developers of streaming services and getting better commitments
4 from them to build their experiences on Apple TV than what we
5 had from them on Android.

6 **MR. KRAVIS:** All right. At this time I move
7 Exhibit 5956 into evidence.

8 **MR. EVEN:** No objection.

9 **THE COURT:** Okay. It's admitted.

10 (Trial Exhibit 5956 received in evidence.)

11 **BY MR. KRAVIS:**

12 **Q.** And I'd like to start by directing your attention,
13 Mr. Rosenberg, to the e-mail at the bottom, the one from
14 Mr. Lockheimer to you on March 23rd, 2015, at 9:11 p.m. Do you
15 see that?

16 **A.** Yes, I see that.

17 **Q.** Mr. Lockheimer begins his e-mail by writing (as read):

18 "Hey, Jamie, at our weekly TV meeting the topic of
19 apps for TV came up."

20 What did you understand him to be referring to when he
21 says "apps for TV"?

22 **A.** It's what I was talking about before, which is apps for --
23 in our case for the Android TV platform that we were working
24 on.

25 **Q.** And later in that sentence Mr. Lockheimer writes (as

1 read):

2 "Serge pointed out he thinks Apple is offering a
3 15 percent rev share in this space and locking in content
4 developers."

5 And then he mentions HBO and Showtime. Do you see that?

6 **A.** Yes, I see that.

7 **Q.** What is your understanding of what Mr. Lockheimer means
8 when he refers to the 15 percent rev share?

9 **A.** My understanding is that he felt that -- or I guess he had
10 heard that Apple was offering something different than their
11 published 30 percent app store terms to these particular
12 developers.

13 **Q.** And so you understood Mr. Lockheimer to be referring to
14 the service fee that the Apple App Store was charging
15 developers -- developers like HBO and Showtime?

16 **A.** Yes.

17 **Q.** All right. Further on Mr. Lockheimer writes (as read):

18 "I'm worried that we're about to massively lose this
19 developer base. Any ideas on what we could do to remain
20 competitive?"

21 Do you see that?

22 **A.** Yes, I see that.

23 **Q.** And what did you understand Mr. Lockheimer to be asking
24 when he said, "I'm worried that we're about to massively lose
25 this developer base. Any ideas on what we could do to remain

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1 competitive?"

2 **A.** He was worried that these streaming apps would come to
3 Apple TV and not come to Android TV.

4 **Q.** So that Apple would get the apps first?

5 **A.** Yes.

6 **Q.** All right. I'd like to jump forward about a year in time
7 and direct your attention to another e-mail that's Exhibit,
8 confusingly enough, 5996 in the binder.

9 Do you have that one in front of you, Mr. Rosenberg?

10 **A.** Yes, I do.

11 **Q.** And, Mr. Rosenberg, am I right that this is an e-mail that
12 you wrote on May 28, 2016, to others at Google with the subject
13 "Time-Sensitive Subscriptions." Am I right about that?

14 **A.** Yes.

15 **Q.** And am I also right that this e-mail also concerned the
16 revenue share for some transactions in the Apple App Store?

17 **A.** Yes.

18 **MR. KRAVIS:** All right. At this time I move trial
19 Exhibit 5996 into evidence?

20 **MR. EVEN:** No objection.

21 **THE COURT:** It's admitted.

22 (Trial Exhibit 5996 received in evidence.)

23 **BY MR. KRAVIS:**

24 **Q.** All right. Mr. Rosenberg, I want to direct your attention
25 to the first paragraph of the e-mail. You write (as read):

1 "We're starting to hear an escalation of the rumors
2 that Apple will be changing its rev share on subscriptions
3 to 85/15 potentially as early as WWDC."

4 Do you see that?

5 **A.** Yes, I see that.

6 **Q.** All right. So, first of all, what is WWDC?

7 **A.** I believe that stands for Apple's Worldwide Developer
8 Conference, or at least that's what it was called at the time.

9 **Q.** And when you used the term -- when you said "Apple will be
10 changing its rev share on subscriptions," what were you
11 referring to?

12 **A.** We were referring to in-app payments related to
13 subscription content in apps that were in the Apple App Store.

14 **Q.** So this is like when someone goes to the Apple App Store,
15 they download an app, they purchase a subscription in the app,
16 the service fee that Apple is charging is what we're talking
17 about here?

18 **A.** Yes.

19 **THE COURT:** Please. Next time I'm just going to have
20 you move on. Okay?

21 Disregard that answer. Ask that question again in the
22 proper form.

23 **MR. KRAVIS:** Yes.

24 **BY MR. KRAVIS:**

25 **Q.** The rev share on subscriptions -- just to break that down,

1 what are the subscriptions that we're talking about?

2 **A.** Well, this would be an app that you download from the
3 Apple App Store, and then inside the app you might sign up for
4 a subscription.

5 **Q.** And the rev share on the subscriptions, what does "rev
6 share on the subscriptions" refer to in this context?

7 **A.** So in this context that would be the way the revenue is
8 split between what goes to the developer and what Apples take.

9 **Q.** And 85/15, what does that mean here?

10 **A.** Here 85 percent goes to the developer and 15 percent goes
11 to Apple.

12 **Q.** And so why was it at this time in May of 2016 that you
13 were writing to your team about rumors that Apple would be
14 changing its rev share on subscriptions?

15 **A.** Well, because at the time our rev share on subscriptions
16 was 30 percent, and so this would be a change in Apple's
17 pricing that we would have to pay attention to and think about.

18 **Q.** The next paragraph starts (as read):

19 "It's a scramble, but I think we need to assume the
20 rumor is true and plan accordingly."

21 Do you see that?

22 **A.** Yes, I see that.

23 **Q.** And why was it that you were telling folks at Google that
24 you thought "We needed to assume the rumor was true and plan
25 accordingly"?

1 **A.** Well, because we were -- we were competing for developer
2 attention with Apple. We wanted Apple -- we wanted developers
3 to be focused on Android. We wanted to make sure that our
4 proposition to developers was competitive with Apple's
5 proposition to developers. It was another example of how we
6 were constantly measuring ourselves against what Apple in the
7 app store were doing to make sure we had a strong response with
8 Google Play.

9 **Q.** Now, your e-mail talks about a rumor. Did there, in fact,
10 come a time when Apple did change its revenue share for the
11 subscription transaction we've been talking about?

12 **A.** Yes. It wasn't exactly this. What they did is they kept
13 the 30 percent for the first year of a subscription, and then
14 the revenue share on any charges after the first year went
15 to -- their revenue share went down to 15 percent. I believe
16 that's the change they made at this time.

17 **Q.** All right. So I'm going to direct your attention to
18 another exhibit.

19 Could we have -- can you turn in your binder, please, to
20 Exhibit 5580?

21 **A.** (Witness examines document.)

22 **Q.** Mr. Rosenberg, do you have that one in front of you?

23 **A.** Yes.

24 **Q.** Is this an e-mail that was written from Sameer Samat to
25 you on June 8th of 2016?

1 **A.** Yes.

2 **Q.** And what is this e-mail about?

3 **A.** This is a draft. I believe it's a draft of an e-mail he
4 wanted to send to a broader audience that followed Apple's
5 announcement, basically updating this broader announcement on
6 the nature of Apple's announcement and how we were thinking
7 about it.

8 **MR. KRAVIS:** All right. At this time I'd move Trial
9 Exhibit 5580 into evidence.

10 **MR. EVEN:** No objection.

11 **THE COURT:** It's admitted.

12 (Trial Exhibit 5580 received in evidence.)

13 **BY MR. KRAVIS:**

14 **Q.** Now, Mr. Rosenberg, I'm going to direct your attention to
15 the first paragraph of the e-mail here. The draft reads (as
16 read):

17 "Apple announced some app store changes today. Adds
18 a new rev share for subscriptions."

19 Do you see that?

20 **A.** Yes, I see that.

21 **Q.** And what did you understand that to be referring to?

22 **A.** That's referring to what we just talked about, the change
23 Apple announced on the 15 percent for the subsequent to one
24 year.

25 **Q.** And what exactly -- so after this change, what was the

1 service fee structure in the Apple App Store for the purchase
2 of subscriptions through apps like we've been talking about?

3 **A.** It was 30 percent for anything -- for anything within the
4 first 12 months, as I recall, and then 15 percent for any
5 charges after the -- those 12 months for a given subscriber.

6 **Q.** And just to level set here, at this time what was the
7 service fee that the Google Play Store was charging for those
8 kinds of subscriptions?

9 **A.** It was 30 percent consistently no matter the duration.

10 **Q.** I'd like to direct your attention, please, to the last
11 paragraph of the draft e-mail. The one that begins "All this
12 said."

13 You see the draft e-mail reads (as read):

14 "All this said, this move signals much more serious
15 approach from Apple around their subscription billing
16 platform. We have been investing here, but will be
17 looking at intensifying our focus here in the near
18 future."

19 Do you see that?

20 **A.** Yes, I see that.

21 **Q.** What is your understanding of what the draft e-mail is
22 referring to when it says "We have been investing here, but
23 we'll be looking at intensifying our focus here in the near
24 future"?

25 **A.** This was, I think, an acknowledgment generally that apps

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1 with subscriptions were becoming really important on mobile
2 devices in all sorts of different use cases. Apple was focused
3 on building a good platform for developers there, and we wanted
4 to make sure we were doing the same thing.

5 **Q.** And after these e-mails that we've been looking at, did
6 the Google Play Store in fact consider changing its revenue
7 share on these subscription purchases in response?

8 **A.** Yes, we did.

9 **Q.** I'd like to show you another exhibit. Could you turn in
10 your binder, please, to 5674?

11 **A.** (Witness examines document.)

12 **Q.** And, Mr. Rosenberg, is this a slide deck from July 31st,
13 2017?

14 **A.** Yes.

15 **Q.** The title is "Subscriptions V2 Follow-up"?

16 **A.** Yes.

17 **MR. KRAVIS:** All right. At this time I move Trial
18 Exhibit 5674 into evidence.

19 **MR. EVEN:** No objection.

20 **THE COURT:** All right. It's admitted.

21 (Trial Exhibit 5674 received in evidence.)

22 **BY MR. KRAVIS:**

23 **Q.** Now, just so we have the timing down here, Mr. Rosenberg,
24 am I right that this deck is about a year -- a year and a few
25 months after the e-mails we were just looking at?

1 A. Yes.

2 Q. I want to direct your attention to one portion of the
3 deck. If you could turn to page 7, please.

4 A. (Witness examines document.)

5 Q. You see the title slide says "Rev Share"?

6 A. Yes.

7 Q. And just to remind us, what does "rev share" refer to in
8 this context?

9 A. That refers to that split, what percent of the revenue
10 that -- what percent of a user's payment goes to the app store
11 versus the developer.

12 Q. And turn to the next slide for me, please.

13 The title is "Competition: Apple and Amazon at 30 percent
14 for 12 months." Do you see that?

15 A. Yes.

16 Q. What is your understanding of what that's referring to?

17 A. That's referring to that change that we just talked about
18 where the revenue share rate is 30 percent -- the revenue share
19 rate to the app store is 30 percent for the first 12 months and
20 then 15 percent subsequently, and that was true at that time on
21 both the Apple App Store and the Amazon App Store.

22 Q. The slide title, by the way, says "Competition: Apple and
23 Amazon." Did you view the Apple App Store and the Amazon App
24 Store as competitors to the Google Play Store?

25 A. Yes.

1 Q. And so what is it that is being modeled or assessed on
2 this slide?

3 A. I think this is assessing broadly across the industry
4 different app stores' approaches to subscriptions, I believe.

5 Q. And after the -- in the time period we've been talking
6 about, did the Google Play Store eventually lower its revenue
7 share on the purchases of subscriptions in apps like we've been
8 talking about?

9 A. Yes. In this time frame we matched what Apple and Amazon
10 were doing.

11 Q. Mr. Rosenberg, I just have a few final questions for you.
12 Could we look back at another exhibit my colleague showed
13 you? Exhibit 708, please.

14 Mr. Rosenberg, do you remember you were asked some
15 questions about this sort of top couple bullet points of
16 Exhibit 708?

17 A. Yes.

18 Q. (as read):

19 "Value delivered to developers by Google Play is not
20 aligned with how much developers pay."

21 Do you see that?

22 A. Yes, I see that.

23 Q. And then at the bottom (as read):

24 "The pricing (30 percent rev share on in-app
25 purchases) feels arbitrary and high to developers."

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1 Do you see that?

2 A. Yes.

3 Q. Mr. Rosenberg, did you write these words?

4 A. No, I didn't.

5 Q. Okay. Do you agree with this sentiment "The pricing
6 (30 percent rev share on in-app purchases) feels arbitrary and
7 high"?

8 A. No.

9 Q. Why not?

10 A. Because we felt good about the value that we provided for
11 that -- for that 30 percent. Also, it wasn't -- we were
12 getting feedback from some developers, but that was not a broad
13 sentiment we were hearing.

14 Q. Now, Mr. Rosenberg, just to conclude here, I think you
15 testified earlier that you participated in the discussions with
16 Samsung in early 2019 about Project Banyan. Did I hear that
17 correctly?

18 A. Yes.

19 Q. And I think you also told my colleague that you signed the
20 Samsung Revenue Share Agreement in November of 2020?

21 A. Yes.

22 Q. You were asked some questions about handshake deals.
23 Mr. Rosenberg, are you aware of any handshake deals between
24 Google and Samsung about the Samsung Galaxy Store?

25 A. Absolutely not.

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1 **Q.** Thank you, Mr. Rosenberg.

2 **MR. KRAVIS:** I have no further questions.

3 **THE COURT:** Okay. How much do you have?

4 **MR. EVEN:** More than 30 seconds, Your Honor.

5 **THE COURT:** More than what? No, no, no.

6 **MR. EVEN:** I believe you said we were finishing at
7 3:20.

8 **THE COURT:** Don't worry. How much do you have?

9 **MR. EVEN:** Probably 15, 20 minutes.

10 **THE COURT:** Let's just get it done. Okay? Make it
11 10. All right? You can get it done in 10. I have full
12 confidence in that.

13 **MR. EVEN:** I will do my best.

14 **RECROSS-EXAMINATION**

15 **BY MR. EVEN:**

16 **Q.** Mr. Rosenberg, let's start with 805. That is the Epic
17 proposal.

18 You said, I think, to my colleague that you wanted to have
19 the games; correct?

20 **A.** Yes.

21 **Q.** Turn to page 5.

22 You also wanted not to legitimize the Samsung store;
23 correct?

24 **A.** We didn't want the Samsung store to have the game
25 exclusively.

ROSENBERG - RECROSS / EVEN

1 Q. Yes. You didn't want to legitimize it; correct?

2 A. We didn't --

3 Q. That's what the slide says, sir.

4 A. Yes, I see that.

5 Q. Now, you talked about the Android brand impact that is
6 mentioned down here on the same slide; right?

7 A. Yes.

8 Q. So Epic launched Fortnite on IOS back in March of 2018;
9 correct?

10 A. Yes.

11 Q. And Fortnite was available only on IOS there; correct?

12 A. Yes.

13 Q. And at the time you did not offer Epic \$208 million to
14 bring the game quickly to Play; correct?

15 A. That's correct.

16 Q. You did not offer it anything?

17 A. That -- I believe so, that's correct.

18 Q. You mentioned something about a vulnerability that you
19 thought maybe you heard about with the Epic launch; correct?

20 A. I talked about one that was eventually found.

21 Q. Now, you have no idea how many people, if anyone, was ever
22 affected by that vulnerability; correct?

23 A. That's correct.

24 Q. And you know, or should know, that Epic corrected that
25 vulnerability within a day of being told by Google; correct?

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1 A. I don't remember exactly, but it sounds correct.

2 Q. And you understand that after that was fixed, the install
3 flow on Samsung is not changed; correct?

4 A. I don't remember specifically, but that sounds fair.

5 Q. If we go back to 136, Exhibit 136, and this is the Banyan
6 and Hug --

7 A. Yes.

8 Q. -- slide?

9 And in this slide, let's go to page 3, you talked about
10 the comment about Android to IOS churn; right?

11 A. Yes.

12 Q. Now, we see here that for Play margin loss, somebody went
13 out and did the calculations and modeled it and said, "This is
14 what we think we're going to lose"; right?

15 A. Yes, I assume so.

16 Q. And nobody did that for this supposed concern about churn
17 to IOS; correct?

18 A. Correct. There are no numbers there.

19 Q. And if you go to Slide 4, there's nothing about Apple
20 there; correct?

21 A. Well, I would argue that the lower right is about
22 Android's competitiveness with Apple.

23 Q. Well, it doesn't say that; right?

24 A. That's right.

25 Q. And if we go to -- there are other Hug slides that this

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1 jury has seen now many times, but if we go back to 19, which is
2 about Banyan, and you said it was very important to you to have
3 the authoritative store to compete with Apple; right?

4 **A.** Yes.

5 **Q.** That, too, is not on the slide; right? The thing that's
6 on the slide is that you're going to lose \$930 million to the
7 Galaxy Store; right?

8 **A.** Yes. This was putting in context the dollars we were
9 proposing.

10 **Q.** Sir, it's a yes-or-no question.

11 This was about 930 million in loss to the Galaxy Store;
12 correct?

13 **A.** Yes, I see it says that here.

14 **Q.** All right. Going to 652, you were asked whether the
15 statement about unnecessary competition -- prevent unnecessary
16 competition. That was Samsung's or Google's?

17 **A.** Yes.

18 **Q.** Now, we've seen the e-mails between you and Mr. Patrick
19 Chomet; correct?

20 **A.** Yes.

21 **Q.** You understand that you too told Mr. Chomet that the whole
22 goal of Project Banyan was to prevent competition so the teams
23 don't go out and compete; right?

24 **A.** I don't agree with your characterization.

25 **Q.** The jury, I suspect, remembers those e-mails.

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1 If we can go to 5996, and that's the one that deals with
2 Apple's announcement of the reduced 15 percent fee of the
3 second year subscriptions?

4 A. Yes.

5 Q. And you said you were competing, and that's why you
6 thought you needed to lower the rev share as well; right?

7 A. Yes.

8 Q. Now, Apple reduced its fee for subscriptions to 15 percent
9 after the first year in June of 2016; right?

10 A. Yes.

11 Q. And Google did not reduce its fee for subscriptions to
12 15 percent in 2016; correct?

13 A. Correct.

14 Q. And Google did not reduce its fee for subscriptions to
15 15 percent in 2017?

16 A. No, I don't believe that's true.

17 Q. You lowered in January of 2018, sir; is that correct?

18 A. Okay. We may have announced it sooner, but maybe that was
19 the effective date.

20 Q. That was when it started to actually go down,
21 January 2018; right, sir?

22 A. That sounds right.

23 Q. And so there was a commission difference between Google
24 and Apple with respect to subscriptions from June 2016 until
25 January of 2018; correct?

ROSENBERG - RECROSS / EVEN

1 A. Yes, with the exception of that LRAP program that we
2 talked about.

3 Q. A year and a half there was a difference in the second
4 year of subscriptions; correct?

5 A. Yes.

6 Q. And that difference was huge. It was 50 percent
7 difference between subscriptions in the second year -- on
8 subscriptions in the second year; right?

9 A. That was the difference, yes.

10 Q. And during that period, not a single developer pulled out
11 of the Play Store to focus only on IOS because of this
12 difference in subscription value; right?

13 A. I'm not aware of a developer pulling out.

14 Q. In fact, since January 1, 2022, the Google Play Store
15 developer announced that developers selling subscriptions pay
16 15 percent fee for the entire duration of the subscription;
17 correct?

18 A. That sounds right. I was more removed at that time.

19 Q. On Apple it's still 30 percent for the first year; right?

20 A. I'm not sure, but that sounds right.

21 Q. Okay. You're not aware of an exodus of developers from
22 IOS to Google now either because of that difference in price;
23 right?

24 A. That's fair, yes.

25 Q. If we go to 5674, that's the "Subscription V2 Follow-up."

1 Do you see that?

2 A. Yes.

3 Q. That is I think the only slide deck that we've seen and
4 the jury has seen about actual comparisons to Apple.

5 And here, if you go to page 2, this is the one where
6 you've seen a document that compares the subscription rates
7 between Amazon and Apple, et cetera; right?

8 A. Yes.

9 Q. And if you see here, to discuss today, what you're talking
10 about is deintegration risk; right?

11 A. I see that it says that, yes.

12 Q. And if you go up on context, you see that there's an
13 increasing concern that top subscription devs will deintegrate
14 with Play billing; right?

15 A. I see that it says that.

16 Q. And the concern here was that given that you have an
17 exception -- had an exception at the time, top developers will
18 start using another billing platform, not that they would leave
19 Play; correct?

20 A. I think this is in reference to developers who were using
21 Play billing and would decide to stop using it.

22 Q. And they would stop using it, but they would not leave the
23 Play Store; correct?

24 A. Correct.

25 MR. EVEN: No further questions, Your Honor.

ROSENBERG - RECROSS / EVEN

1 **THE COURT:** Okay. Anything from the jury?

2 (No response.)

3 **THE COURT:** All right. This is the part of the day
4 when you look at me and I look at you, and we pledge we're
5 going to put this all aside. I'm trying to come up with
6 different lead-ins to keep it fresh.

7 You're going to put this aside, clear your minds. Go back
8 to your day. No research. No talking. No thinking. No
9 e-mailing. No investigating.

10 See you tomorrow morning. Now, let's start at 9:30.
11 Okay? Let's see how it goes. It could be a disaster. Maybe
12 people won't come in. Let's just test it. All right?

13 We'll go a little longer tomorrow just to make up for the
14 half hour because I want to keep us on track. Okay? And then
15 we'll see after that whether we're going to start at 9:00.

16 Nothing on Friday. So your day will be dark on Friday.
17 All right? Okay.

18 **THE CLERK:** All rise.

19 (Proceedings were heard out of the presence of the jury:)

20 **THE COURT:** You're discharged and see you all
21 tomorrow.

22 (Proceedings adjourned at 3:31 p.m.)

23 ---oOo---

24

25

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Monday, November 13, 2023

A handwritten signature in black ink, reading "Kelly Shainline", is written over a horizontal line.

Kelly Shainline, CSR No. 13476, RPR, CRR
U.S. Court Reporter